



# **Income Tax Assessment Act 1997**

**No. 38, 1997**

**An Act about income tax and related matters**

Note: An electronic version of this Act is available in ComLaw (<http://www.comlaw.gov.au/>)



---

# Contents

<b>Chapter 1—Introduction and core provisions</b>	<b>1</b>
<b>Part 1-1—Preliminary</b>	<b>1</b>
<b>Division 1—Preliminary</b>	<b>2</b>
1-1 Short title.....	2
1-2 Commencement .....	2
1-3 Differences in style not to affect meaning .....	2
<b>Part 1-2—A Guide to this Act</b>	<b>3</b>
<b>Division 2—How to use this Act</b>	<b>3</b>
<b>Subdivision 2-A—How to find your way around</b>	<b>3</b>
2-1 The design.....	3
<b>Subdivision 2-B—How the Act is arranged</b>	<b>4</b>
2-5 The pyramid .....	4
<b>Subdivision 2-C—How to identify defined terms and find the definitions</b>	<b>5</b>
2-10 When defined terms are identified .....	5
2-15 When terms are <i>not</i> identified .....	5
2-20 Identifying the defined term in a definition.....	6
<b>Subdivision 2-D—The numbering system</b>	<b>7</b>
2-25 Purposes .....	7
2-30 Gaps in the numbering .....	7
<b>Subdivision 2-E—Status of Guides and other non-operative material</b>	<b>8</b>
2-35 Non-operative material.....	8
2-40 Guides .....	8
2-45 Other material .....	8
<b>Division 3—What this Act is about</b>	<b>9</b>
Table of sections.....	9
3-1 What this Act is about.....	9
3-5 Annual income tax .....	9
3-10 Your other obligations as a taxpayer .....	11
3-15 Your obligations <i>other than</i> as a taxpayer.....	11
<b>Part 1-3—Core provisions</b>	<b>12</b>
<b>Division 4—How to work out the income tax payable on your taxable income</b>	<b>12</b>
4-1 Who must pay income tax .....	12
4-5 Meaning of <i>you</i> .....	12
4-10 How to work out how much income tax you must pay .....	13

---

4-15 How to work out your taxable income .....	15
<b>Division 6—Assessable income and exempt income</b>	<b>17</b>
<b>Guide to Division 6</b>	<b>17</b>
6-1 Diagram showing relationships among concepts in this Division .....	18
<b>Operative provisions</b>	<b>19</b>
6-5 Income according to ordinary concepts ( <i>ordinary income</i> ).....	19
6-10 Other assessable income ( <i>statutory income</i> ).....	19
6-15 What is <i>not</i> assessable income .....	20
6-20 Exempt income .....	21
6-25 Relationships among various rules about ordinary income .....	22
<b>Division 8—Deductions</b>	<b>23</b>
8-1 General deductions.....	23
8-5 Specific deductions .....	23
8-10 No double deductions.....	24
<b>Part 1-4—Checklists of what is covered by concepts used in the core provisions</b>	<b>25</b>
<b>Division 9—Entities that must pay income tax</b>	<b>25</b>
9-1 List of entities.....	25
9-5 Entities that work out their income tax by reference to something other than taxable income .....	26
<b>Division 10—Particular kinds of assessable income</b>	<b>28</b>
10-5 List of provisions about assessable income .....	28
<b>Division 11—Lists of classes of exempt income</b>	<b>42</b>
11-1 Overview.....	42
11-5 Entities that are exempt, no matter what kind of ordinary or statutory income they have.....	42
11-10 Ordinary or statutory income which is exempt, no matter whose it is.	45
11-15 Ordinary or statutory income which is exempt only if it is derived by certain entities.....	46
<b>Division 12—Particular kinds of deductions</b>	<b>51</b>
12-5 List of provisions about deductions.....	51
<b>Division 13—Tax offsets</b>	<b>72</b>
13-1 List of tax offsets.....	72
<b>Chapter 2—Liability rules of general application</b>	<b>78</b>
<b>Part 2-5—Rules about deductibility of particular kinds of amounts</b>	<b>78</b>
<b>Division 26—Some amounts you cannot deduct, or cannot deduct in full</b>	<b>78</b>
26-55 Limit on deductions.....	78

---

---

<b>Division 28—Car expenses</b>	<b>80</b>
<b>Guide to Division 28</b>	<b>80</b>
28-1 What this Division is about .....	80
28-5 Map of this Division.....	81
<b>Subdivision 28-A—Deductions for car expenses</b>	<b>82</b>
28-10 Application of Division 28 .....	82
28-12 Car expenses .....	82
28-13 Meaning of <i>car expense</i> .....	82
<b>Subdivision 28-B—Choosing which method to use</b>	<b>83</b>
<b>Guide to Subdivision 28-B</b>	<b>83</b>
28-14 What this Subdivision is about.....	83
28-15 Choosing among the 4 methods .....	83
<b>Operative provision</b>	<b>85</b>
28-20 Rules governing choice of method .....	85
<b>Subdivision 28-C—The “cents per kilometre” method</b>	<b>85</b>
28-25 How to calculate your deduction .....	85
28-30 Depreciation .....	86
28-35 Substantiation.....	86
<b>Subdivision 28-D—The “12% of original value” method</b>	<b>86</b>
28-45 How to calculate your deduction .....	87
28-50 Eligibility .....	87
28-55 Depreciation .....	88
28-60 Substantiation.....	88
<b>Subdivision 28-E—The “one-third of actual expenses” method</b>	<b>88</b>
28-70 How to calculate your deduction .....	88
28-75 Eligibility .....	89
28-80 Substantiation.....	89
<b>Subdivision 28-F—The “log book” method</b>	<b>89</b>
28-90 How to calculate your deduction .....	89
28-95 Eligibility .....	91
28-100 Substantiation.....	91
<b>Subdivision 28-G—Keeping a log book</b>	<b>92</b>
<b>Guide to Subdivision 28-G</b>	<b>92</b>
28-105 What this Subdivision is about.....	92
28-110 Steps for keeping a log book .....	93
<b>Operative provisions</b>	<b>93</b>
28-115 Income years for which you need to keep a log book.....	93
28-120 Choosing the 12 week period for a log book .....	94

---

---

28-125 How to keep a log book.....	94
28-130 Replacing one car with another .....	95
<b>Subdivision 28-H—Odometer records for a period</b>	<b>96</b>
<b>Guide to Subdivision 28-H</b>	<b>96</b>
28-135 What this Subdivision is about .....	96
<b>Operative provision</b>	<b>97</b>
28-140 How to keep odometer records for a car for a period .....	97
<b>Subdivision 28-I—Retaining the log book and odometer records</b>	<b>98</b>
28-150 Retaining the log book for the retention period .....	98
28-155 Retaining odometer records.....	99
<b>Subdivision 28-J—Situations where you cannot use, or don't need to use, one of the 4 methods</b>	<b>100</b>
<b>Guide to Subdivision 28-J</b>	<b>100</b>
28-160 What this Subdivision is about .....	100
<b>Operative provisions</b>	<b>100</b>
28-165 Exception for particular cars taken on hire.....	100
28-170 Exception for particular cars used in particular ways .....	101
28-175 Further miscellaneous exceptions.....	103
28-180 Car expenses related to award transport payments .....	104
28-185 Application of Subdivision 28-J to PAYE earners and the entities that pay them .....	105
<b>Division 36—Tax losses of earlier income years</b>	<b>106</b>
<b>Guide to Division 36</b>	<b>106</b>
36-1 What this Division is about .....	106
<b>Subdivision 36-A—Deductions for tax losses of earlier income years</b>	<b>106</b>
36-10 How to calculate a tax loss for an income year .....	106
36-15 How to deduct tax losses.....	107
36-20 Net exempt income .....	108
36-25 Special rules about tax losses .....	110
<b>Subdivision 36-B—Effect of you becoming bankrupt</b>	<b>112</b>
<b>Guide to Subdivision 36-B</b>	<b>112</b>
36-30 What this Subdivision is about .....	112
<b>Operative provisions</b>	<b>113</b>
36-35 No deduction for tax loss incurred before bankruptcy.....	113
36-40 Deduction for amounts paid for debts incurred before bankruptcy ...	113
36-45 Limit on deductions for amounts paid.....	114

---

---

<b>Part 2-10—Capital allowances: rules about deductibility of capital expenditure</b>	<b>116</b>
<b>Division 40—Overview of capital allowances</b>	<b>116</b>
<b>Guide to Division 40</b>	<b>116</b>
40-1 What this Division is about .....	116
40-5 Map of Divisions 40 and 41 .....	117
<b>Subdivision 40-A—What a capital allowance is</b>	<b>118</b>
40-7 Effect of this Division .....	118
40-10 What expenditure qualifies? .....	118
40-15 Who may deduct? .....	118
40-20 How to work out the deduction .....	119
40-25 Disposal, loss, destruction or termination of use: balancing adjustment .....	119
<b>Subdivision 40-B—Summary and finding table</b>	<b>121</b>
40-30 Table of capital allowances .....	121
<b>Division 41—Common rules for capital allowances</b>	<b>128</b>
<b>Guide to Division 41</b>	<b>128</b>
41-1 What this Division is about .....	128
41-5 Summary and finding table .....	128
<b>Subdivision 41-A—Common rule 1 (Roll-over relief for related entities)</b>	<b>130</b>
<b>Guide to Common rule 1</b>	<b>130</b>
41-10 What this Common rule is about .....	130
<b>Operative provisions</b>	<b>130</b>
41-15 When is roll-over relief available? .....	130
41-20 Disposals of property .....	131
41-25 How are the balancing adjustment provisions affected? .....	132
41-30 What is the effect of the roll-over on the transferor's and transferee's entitlement to a deduction? .....	132
41-35 Subsequent applications of this Common rule—relief available even if subsequent transferor got no deduction .....	133
41-40 Subsequent disposal—modify the balancing adjustment accordingly .....	133
41-45 Commissioner may amend assessment after recoupment despite section 170 of the <i>Income Tax Assessment Act 1936</i> .....	134
<b>Subdivision 41-B—Common rule 2 (Non-arm's length transactions)</b>	<b>135</b>
41-65 Non-arm's length transactions .....	135

---

---

<b>Subdivision 41-C—Common rule 3 (Anti-avoidance provisions relating to the ownership of property)</b>	<b>136</b>
41-85 You are taken to be owner of property for purposes of certain anti-avoidance provisions .....	136
<b>Division 43—Deductions for capital works</b>	<b>137</b>
<b>Guide to Division 43</b>	<b>137</b>
43-1 What this Division is about .....	137
43-2 Key concepts used in this Division .....	137
<b>Subdivision 43-A—Key operative provisions</b>	<b>139</b>
<b>Guide to Subdivision 43-A</b>	<b>139</b>
43-5 What this Subdivision is about .....	139
<b>Operative provisions</b>	<b>139</b>
43-10 Deductions for capital works .....	139
43-15 Amount you can deduct .....	140
43-20 Capital works to which this Division applies .....	140
43-25 Rate of deduction .....	142
43-30 No deduction until construction is complete .....	142
43-35 Requirement for body corporate to be registered under the Industry Research and Development Act .....	143
43-40 Deduction for destruction of capital works .....	143
43-45 Application of Division 41 common rules .....	144
43-50 Links and signposts to other parts of the Act .....	144
43-55 Anti-avoidance—arrangement etc. with tax-exempt entity .....	145
<b>Subdivision 43-B—Establishing the deduction base</b>	<b>146</b>
<b>Guide to Subdivision 43-B</b>	<b>146</b>
43-60 What this Subdivision is about .....	146
43-65 Explanatory material .....	147
<b>Operative provisions</b>	<b>147</b>
43-70 What is construction expenditure? .....	147
43-75 Construction expenditure area .....	148
43-80 When capital works begin .....	150
43-85 Pools of construction expenditure .....	151
43-90 Table of intended use at time of completion of construction .....	152
43-95 Meaning of <i>hotel building</i> and <i>apartment building</i> .....	155
43-100 Certificates by Industry Research and Development Board .....	156
<b>Subdivision 43-C—Your area and your construction expenditure</b>	<b>156</b>
<b>Guide to Subdivision 43-C</b>	<b>156</b>
43-105 What this Subdivision is about .....	156
43-110 Explanatory material .....	157

---

---

<b>Operative provisions</b>	<b>157</b>
43-115 Your area and your construction expenditure—owners .....	157
43-120 Your area and your construction expenditure—lessees and quasi-ownership right holders .....	158
43-125 Lessees' or right holders' pools can revert to owner .....	159
43-130 Identifying your area on acquisition or disposal.....	159
<b>Subdivision 43-D—Deductible uses of capital works</b>	<b>160</b>
<b>Guide to Subdivision 43-D</b>	<b>160</b>
43-135 What this Subdivision is about .....	160
<b>Operative provisions</b>	<b>160</b>
43-140 Using your area in a deductible way .....	160
43-145 Using your area in the 4% manner .....	164
43-150 Meaning of <i>industrial activities</i> .....	168
<b>Subdivision 43-E—Special rules about uses</b>	<b>170</b>
<b>Guide to Subdivision 43-E</b>	<b>170</b>
43-155 What this Subdivision is about .....	170
<b>Operative provisions</b>	<b>171</b>
43-160 Your area is used for a purpose if it is maintained ready for use for the purpose .....	171
43-165 Temporary cessation of use .....	172
43-170 Own use—capital works other than hotel and apartment buildings.....	172
43-175 Own use—hotel and apartment buildings.....	173
43-180 Special rules for hotel and apartment buildings.....	173
43-185 Residential or display use.....	175
43-190 Use of facilities not commonly provided, and of certain buildings used to operate a hotel, motel or guest house .....	176
43-195 Use for research and development activities must be in connection with a business.....	177
<b>Subdivision 43-F—Calculation of deduction</b>	<b>177</b>
<b>Guide to Subdivision 43-F</b>	<b>177</b>
43-200 What this Subdivision is about .....	177
43-205 Explanatory material .....	178
<b>Operative provisions</b>	<b>179</b>
43-210 Deduction for capital works begun after 26 February 1992 .....	179
43-215 Deduction for capital works begun before 27 February 1992 .....	181
43-220 Capital works taken to have begun earlier for certain purposes .....	182
<b>Subdivision 43-G—Undeducted construction expenditure</b>	<b>183</b>
<b>Guide to Subdivision 43-G</b>	<b>183</b>
43-225 What this Subdivision is about .....	183

---

---

<b>Operative provisions</b>	<b>184</b>
43-230 Calculating undeducted construction expenditure—common step..	184
43-235 Post-26 February 1992 undeducted construction expenditure .....	185
43-240 Pre-27 February 1992 undeducted construction expenditure .....	186
<b>Subdivision 43-H—Balancing deduction on destruction of capital works</b>	<b>186</b>
<b>Guide to Subdivision 43-H</b>	<b>186</b>
43-245 What this Subdivision is about .....	186
<b>Operative provisions</b>	<b>187</b>
43-250 The amount of the balancing deduction.....	187
43-255 Amounts received or receivable .....	187
43-260 Apportioning amounts received for destruction .....	188
<b>Chapter 3—Specialist liability rules</b>	<b>189</b>
<b>Part 3-5—Corporate taxpayers and corporate distributions</b>	<b>189</b>
<b>Division 165—Income tax consequences of changing ownership or control of a company</b>	<b>189</b>
<b>Guide to Division 165</b>	<b>190</b>
165-1 What this Division is about .....	190
<b>Subdivision 165-A—Deducting tax losses of earlier income years</b>	<b>190</b>
<b>Guide to Subdivision 165-A</b>	<b>190</b>
165-5 What this Subdivision is about .....	190
<b>Operative provisions</b>	<b>191</b>
165-10 To deduct a tax loss .....	191
165-12 Company must maintain the same owners .....	191
165-13 Alternatively, company must carry on same business .....	192
165-15 Same people must control the voting power, or company must carry on same business .....	193
165-20 When company can deduct <i>part</i> of a tax loss .....	194
<b>Subdivision 165-B—Working out the taxable income and tax loss for the income year of the change</b>	<b>194</b>
<b>Guide to Subdivision 165-B</b>	<b>194</b>
165-23 What this Subdivision is about.....	194
165-25 Summary of this Subdivision .....	195
165-30 Flow chart showing the application of this Subdivision .....	197
<b>When a company must work out its taxable income and tax loss under this Subdivision</b>	<b>198</b>
165-35 On a change of ownership, unless the company carries on the same business .....	198

---

---

165-37	Who has more than a 50% stake in the company during a period ...	198
165-40	On a change of control of voting power in the company, unless the company carries on the same business.....	199
<b>Working out the company's taxable income</b>		<b>200</b>
165-45	First, divide the income year into periods .....	200
165-50	Next, calculate the notional loss or notional taxable income for each period.....	201
165-55	How to attribute deductions to periods.....	201
165-60	How to attribute assessable income to periods .....	204
165-65	How to calculate the company's taxable income for the income year .....	205
<b>Working out the company's tax loss</b>		<b>206</b>
165-70	How to calculate the company's tax loss for the income year .....	206
165-75	How to calculate the company's notional loss or notional taxable income for a period when the company was a partner .....	207
165-80	How to calculate the company's share of a partnership's notional loss or notional net income for a period if both entities have the same income year .....	208
165-85	How to calculate the company's share of a partnership's notional loss or notional net income for a period if the entities have different income years .....	209
165-90	Company's full year deductions include a share of partnership's full year deductions.....	210
<b>Subdivision 165-D—Tests for finding out whether the company has maintained the same owners</b>		<b>211</b>
<b>The primary and alternative tests</b>		<b>211</b>
165-150	Who has more than 50% of the voting power in the company during a period.....	211
165-155	Who has rights to more than 50% of the company's dividends during a period.....	212
165-160	Who has rights to more than 50% of the company's capital distributions during a period.....	213
165-165	Rules about the primary test for a condition.....	213
165-175	Tests can be satisfied by a single person .....	214
<b>Rules affecting the operation of the tests</b>		<b>214</b>
165-180	Arrangements affecting beneficial ownership of shares .....	214
165-185	Shares treated as never having carried rights .....	214
165-190	Shares treated as always having carried rights .....	215
165-195	Disregard redeemable shares.....	215
165-200	Rules do not affect totals of shares or rights.....	216
165-205	Death of beneficial owner .....	216

---

---

<b>Subdivision 165-E—The same business test</b>	<b>216</b>
165-210 The test .....	216
<b>Division 166—Income tax consequences of changing ownership or control of a listed public company</b>	<b>218</b>
<b>Guide to Division 166</b>	<b>218</b>
166-1 What this Division is about .....	218
<b>Subdivision 166-A—Deducting tax losses of earlier income years</b>	<b>219</b>
166-5 How Subdivision 165-A applies to a listed public company .....	219
166-10 How Subdivision 165-A applies to a 100% subsidiary of a listed public company .....	221
166-15 Companies can choose that this Subdivision is not to apply to them .....	222
<b>Subdivision 166-B—Working out the taxable income and tax loss for the income year of the change</b>	<b>222</b>
166-20 How Subdivision 165-B applies to a listed public company .....	222
166-25 How to work out the taxable income and tax loss .....	224
166-30 How Subdivision 165-B applies to 100% subsidiary of a listed public company .....	225
166-35 Companies can choose that this Subdivision is not to apply to them .....	225
<b>Subdivision 166-D—Tests for finding out whether the listed public company has maintained the same owners</b>	<b>226</b>
<b>Guide to Subdivision 166-D</b>	<b>226</b>
166-140 What this Subdivision is about .....	226
<b>Substantial continuity of ownership</b>	<b>227</b>
166-145 Substantial continuity of ownership .....	227
<b>The ownership tests</b>	<b>228</b>
166-150 Who has more than 50% of the voting power in the listed public company at a particular time .....	228
166-155 Who has rights to more than 50% of the listed public company's dividends at a particular time .....	228
166-160 Who has rights to more than 50% of the listed public company's capital distributions at a particular time .....	229
<b>Rules affecting the operation of the ownership tests</b>	<b>229</b>
166-165 Rules in Division 165 apply .....	229
<b>Subdivision 166-F—How to treat shareholdings of less than 1%</b>	<b>231</b>
<b>Guide to Subdivision 166-F</b>	<b>231</b>
166-215 What this Subdivision is about .....	231

---

---

<b>Special tracing rules for listed public companies</b>	<b>232</b>
166-220 Shareholdings of less than 1% in the listed public company .....	232
166-225 Shareholdings of less than 1% in an interposed listed public company .....	232
166-230 Notional shareholder .....	233
166-235 Notional shareholder taken to have minimum voting control, dividend rights and capital rights.....	235
166-240 Voting, dividend and capital shareholding of less than 1%.....	236
166-245 Shares that are part of a substantial shareholding.....	237
<b>When the rules in this Subdivision do not apply</b>	<b>238</b>
166-250 Limit on listed public company splitting its shares into different classes.....	238
166-255 If listed public company would not have otherwise passed the ownership tests .....	238
<b>Subdivision 166-G—How to treat interposed superannuation funds, approved deposit funds and special companies</b>	<b>238</b>
<b>Guide to this Subdivision</b>	<b>238</b>
166-260 What this Subdivision is about.....	238
<b>Special tracing rules for listed public companies</b>	<b>239</b>
166-265 When fund or special company is taken to control voting power..	239
166-270 When fund or special company is taken to have rights to dividends and capital .....	240
<b>Division 170—Treatment of company groups for income tax purposes</b>	<b>243</b>
<b>Subdivision 170-A—Transfer of tax losses within wholly-owned groups of companies</b>	<b>243</b>
<b>Guide to Subdivision 170-A</b>	<b>243</b>
170-1 What this Subdivision is about.....	243
170-5 Basic principles for transferring tax losses.....	244
170-10 When a company can transfer a tax loss.....	245
170-15 Income company is taken to have incurred transferred loss .....	245
170-20 Who can deduct transferred loss.....	245
170-25 Tax treatment of payment for transferred tax loss .....	246
170-30 Companies must be in existence and members of the same wholly-owned group .....	246
170-35 The loss company.....	246
170-40 The income company .....	247
170-45 Maximum amount that can be transferred .....	248
170-50 Transfer by written agreement.....	250
170-55 Losses must be transferred in order they are incurred .....	250
170-60 Income company cannot transfer transferred tax loss.....	251

---

---

170-65 Agreement transfers as much as can be transferred.....	251
170-70 Amendment of assessments.....	251
<b>Division 175—Use of a company’s tax losses or deductions to avoid income tax</b>	<b>252</b>
<b>Guide to Division 175</b>	<b>252</b>
175-1 What this Division is about .....	252
<b>Subdivision 175-A—Tax benefits from unused tax losses</b>	<b>252</b>
175-5 When Commissioner can disallow deduction for tax loss .....	253
175-10 First case: income injected into company because of available tax loss .....	253
175-15 Second case: someone else obtains a tax benefit because of tax loss available to company .....	254
<b>Subdivision 175-B—Tax benefits from unused deductions</b>	<b>255</b>
175-20 Income injected into company because of available deductions .....	255
175-25 Deduction injected into company because of available income .....	256
175-30 Someone else obtains a tax benefit because of a deduction or income available to company .....	256
175-35 Tax loss resulting from disallowed deductions.....	258
<b>Subdivision 175-D—Shareholding interest in the company</b>	<b>259</b>
175-65 When a person has a shareholding interest in the company .....	259
<b>Division 195—Special types of company</b>	<b>260</b>
<b>Subdivision 195-A—Pooled development funds (PDFs)</b>	<b>260</b>
<b>Guide to Subdivision 195-A</b>	<b>260</b>
195-1 What this Subdivision is about .....	260
<b>Working out a PDF’s taxable income and tax loss</b>	<b>260</b>
195-5 Deductibility of PDF tax losses .....	260
195-10 PDF cannot transfer tax loss.....	261
195-15 Tax loss for year in which company becomes a PDF .....	261
<b>Part 3-45—Rules for particular industries and occupations</b>	<b>263</b>
<b>Division 330—Mining and quarrying</b>	<b>263</b>
<b>Guide to Division 330</b>	<b>264</b>
330-1 What this Division is about .....	264
330-5 How petroleum mining is treated .....	264
330-10 Diagram—the stages of mining.....	264
<b>Subdivision 330-A—Exploration and prospecting</b>	<b>267</b>
330-15 Deduction for exploration or prospecting expenditure .....	267
330-20 Meaning of <i>exploration or prospecting</i> .....	269
330-25 Meaning of <i>minerals, petroleum and quarry materials</i> .....	270

---

---

330-30	Meaning of <i>eligible mining or quarrying operations</i> .....	270
330-35	No deduction for amount “transferred” by seller of right or information .....	271
330-40	Election that section 330-15 not apply to plant .....	271
<b>Subdivision 330-B—Exempt income from the sale of rights to mine</b>		<b>272</b>
330-60	Genuine prospector exemption for ordinary income derived from the sale of rights to mine .....	272
<b>Subdivision 330-C—Development and operation of a mine or quarry</b>		<b>274</b>
330-80	Allowable capital expenditure is deductible.....	274
330-85	What is <i>allowable capital expenditure</i> ? .....	275
330-90	Housing and welfare in mining .....	276
330-95	Expenditure that is not <i>allowable capital expenditure</i> .....	276
330-100	How much is deductible over how long? .....	277
330-105	Meaning of <i>unrecouped expenditure</i> .....	280
330-110	Expenditure that does not relate to a mining property, quarrying property or petroleum field.....	281
330-115	Apportioning between mining and quarrying .....	282
330-120	Resuming use of property for qualifying purposes.....	282
330-125	Each mining property, quarrying property or petroleum field is separate from any other .....	282
<b>Subdivision 330-D—Cash bidding</b>		<b>283</b>
<b>Guide to Subdivision 330-D</b>		<b>283</b>
330-145	What this Subdivision is about.....	283
<b>Operative provisions</b>		<b>284</b>
330-150	Mining cash bidding payments.....	284
330-155	Meaning of <i>mining cash bidding payment</i> and <i>mining authority</i> ..	285
330-160	Exploration or prospecting cash bidding payments made when mining authority has been granted.....	285
330-165	Meaning of <i>exploration or prospecting cash bidding payment</i> and <i>exploration or prospecting authority</i> .....	286
330-170	Exploration or prospecting cash bidding payments made before mining authority has been granted.....	286
330-175	Meaning of <i>entitlement to an eligible cash bidding amount</i> .....	287
330-180	Transfer of entitlement to an eligible cash bidding amount.....	288
330-185	Limit on amount.....	288
330-190	Time limit on agreement .....	289
330-195	Agreement must be in writing and signed .....	289
330-200	When a mining authority is related to an exploration or prospecting authority .....	289
330-205	Meaning of <i>retention authority</i> .....	290

---

---

330-210	When a retention authority is related to an exploration or prospecting authority .....	290
330-215	Effect of renewal of authority .....	290
<b>Subdivision 330-E—Selling a right or information</b>		<b>290</b>
330-235	Buyer and seller may agree to include allowable capital expenditure .....	291
330-240	Meaning of <i>mining, quarrying or prospecting right</i> and <i>mining, quarrying or prospecting information</i> .....	291
330-245	Limit on amount that can be included in the agreement .....	292
330-250	Capital expenditure on buildings or other improvements only counts toward the limit if buyer gets rights to them .....	293
330-255	Time limit on agreement .....	294
330-260	Agreement must be signed and in writing .....	294
330-265	Election under subsection 88B(5) of the <i>Income Tax Assessment Act 1936</i> voids agreement .....	294
330-270	Agreement results in seller giving up further deductions .....	294
330-275	Apportionment between mining and quarrying .....	295
<b>Subdivision 330-F—Excess deductions</b>		<b>295</b>
<b>Guide to Subdivision 330-F</b>		<b>295</b>
330-295	What this Subdivision is about .....	295
<b>Operative provisions</b>		<b>296</b>
330-300	Limit on amounts deductible under Subdivision 330-C for the income year .....	296
330-305	Limit on amounts deductible under Subdivision 330-A for the income year .....	297
330-310	Excess amount deductible for the next income year .....	297
330-315	Election not to limit amounts deductible under Subdivision 330-A or 330-C .....	299
330-320	Excess amount <i>not</i> deductible for certain property .....	300
330-325	Excess amount not deductible if specified in a section 330-235 agreement .....	300
330-330	Excess amount set off against income exempt under section 330-60 .....	301
<b>Subdivision 330-G—Petroleum resource rent tax payments</b>		<b>302</b>
330-350	Payments of petroleum resource rent tax .....	302
<b>Subdivision 330-H—Transporting the product</b>		<b>303</b>
330-370	Transport capital expenditure is deductible .....	303
330-375	Meaning of <i>transport capital expenditure</i> .....	304
330-380	Meaning of <i>transport facility</i> and <i>public body</i> .....	305
330-385	Meaning of <i>mining or quarrying transport</i> .....	305
330-390	Meaning of <i>processed materials, treatment and concentration</i> .....	305

---

---

330-395	How much is deductible over how long? .....	306
330-400	What if you stop using property for mining or quarrying transport? .....	307
330-405	Resuming use of property for mining or quarrying transport .....	307
330-410	Apportionment between mining and quarrying .....	308
330-415	No double deductions for port or other ship facility .....	308
<b>Subdivision 330-I—Rehabilitating the site</b>		<b>308</b>
330-435	Deduction for expenditure on rehabilitation .....	309
330-440	Meaning of <i>rehabilitation</i> .....	309
330-445	Meaning of <i>ancillary activities</i> and <i>eligible building site</i> .....	310
330-450	No deduction for certain expenditure .....	310
330-455	Property used for rehabilitation taken to be used for the purpose of producing assessable income .....	311
<b>Subdivision 330-J—Balancing adjustment</b>		<b>311</b>
<b>Guide to Subdivision 330-J</b>		<b>311</b>
330-475	What this Subdivision is about .....	311
<b>Operative provisions</b>		<b>312</b>
330-480	When a balancing adjustment is required .....	312
330-485	How to do the adjustment .....	314
330-490	Meaning of <i>termination value</i> .....	315
330-495	Meaning of <i>written down value</i> .....	315
330-500	What if there is a disposal of part of an interest in property? .....	316
<b>Subdivision 330-K—Partial change of ownership</b>		<b>316</b>
330-520	Partial change of ownership .....	316
<b>Subdivision 330-L—Modification of Common rules</b>		<b>318</b>
330-540	Which Common rules apply .....	318
330-545	Modification to Common rule 1 (Roll-over relief for related entities) .....	318
330-547	Roll-over relief .....	319
330-550	Transferee inherits certain characteristics from transferor .....	320
330-555	Leases: subsection 88B(5) of the <i>Income Tax Assessment Act 1936</i> election has no effect .....	321
330-560	Modification to Common rule 2 (Non-arm's length transactions) .....	321
<b>Subdivision 330-M—Special situations</b>		<b>322</b>
<b>Guide to Subdivision 330-M</b>		<b>322</b>
330-580	What this Subdivision is about .....	322
<b>Operative provisions</b>		<b>323</b>
330-585	Recoupment of capital expenditure .....	323

---

---

330-590 Deductions under this Division take priority over other deductions .....	323
330-595 Mining, quarrying or prospecting—getting someone else to do the work.....	324
330-600 No deduction for petroleum income sharing .....	325
330-605 No deduction for paying transferees or sub-lessees of mining, quarrying or prospecting rights.....	326
<b>Division 375—Australian films</b>	<b>327</b>
<b>Subdivision 375-G—Film losses</b>	<b>327</b>
<b>Guide to Subdivision 375-G</b>	<b>327</b>
375-800 What this Subdivision is about.....	327
<b>Operative provisions</b>	<b>327</b>
375-805 Does your tax loss have a film component? .....	327
375-810 What is a film loss? .....	329
375-815 Deductibility of film losses .....	329
375-820 Order in which tax losses are to be deducted .....	329
<b>Chapter 4—Collection and recovery of income tax (and some other taxes) 330</b>	
<b>Part 4-5—Collection of income tax instalments</b>	<b>330</b>
<b>Division 750—Guide to Part 4-5</b>	<b>330</b>
750-1 What this Part is about.....	330
750-5 What instalments of income tax do you have to pay? .....	330
750-10 Instalments collected periodically .....	331
750-15 Instalments collected in respect of particular transactions.....	331
750-20 What happens if your income tax is <i>less</i> than the instalments you have paid? How do you get a refund? .....	332
<b>Part 4-10—Withholding taxes: liability and collection provisions</b>	<b>333</b>
<b>Division 765—Withholding tax on dividends, interest and royalties</b>	<b>333</b>
<b>Guide to Division 765</b>	<b>333</b>
765-1 What this Division is about .....	333
765-5 Where to find the rules about the withholding tax.....	333
<b>Division 766—Withholding tax on payments for mining operations on Aboriginal land</b>	<b>334</b>
<b>Guide to Division 766</b>	<b>334</b>
766-1 What this Division is about .....	334
766-5 Where to find the rules about the withholding tax.....	334
<b>Division 767—Interest paid by companies on bearer debentures</b>	<b>335</b>

---

---

<b>Guide to Division 767</b>	<b>335</b>
767-1 What this Division is about .....	335
767-5 Where to find the rules about the tax.....	335
<b>Division 768—Withholding tax on income notionally accruing under certain deferred interest investments</b>	<b>336</b>
<b>Guide to Division 768</b>	<b>336</b>
768-1 What this Division is about .....	336
768-5 Where to find the rules about the withholding tax.....	336
<b>Part 4-30—Collecting Medicare levy and HECS with income tax</b>	<b>337</b>
<b>Division 785—Medicare levy</b>	<b>337</b>
<b>Guide to Division 785</b>	<b>337</b>
785-1 What this Division is about .....	337
785-5 Where to find the rules about Medicare levy.....	337
<b>Division 786—HECS (Higher Education Contribution Scheme)</b>	<b>338</b>
<b>Guide to Division 786</b>	<b>338</b>
786-1 What this Division is about .....	338
786-5 Where to find the rules about repaying HECS contributions.....	338
<b>Chapter 5—Administration</b>	<b>339</b>
<b>Part 5-30—Record-keeping and other obligations</b>	<b>339</b>
<b>Division 900—Substantiation rules</b>	<b>339</b>
<b>Guide to Division 900</b>	<b>339</b>
900-1 What this Division is about .....	339
<b>Subdivision 900-A—Application of Division</b>	<b>340</b>
900-5 Application of the requirements of Division 900 .....	340
900-10 Substantiation requirement.....	340
900-12 Application of Division 900 to PAYE earners and the entities that pay them.....	341
<b>Subdivision 900-B—Substantiating work expenses</b>	<b>342</b>
900-15 Getting written evidence .....	342
900-20 Keeping travel records .....	343
900-25 Retaining the written evidence and travel records.....	343
900-30 Meaning of <i>work expense</i> .....	343
900-35 Exception for small total of expenses.....	345
900-40 Exception for laundry expenses below a certain limit .....	346
900-45 Exception for work expense related to award transport payment ....	346
900-50 Exception for domestic travel allowance expenses .....	347
900-55 Exception for overseas travel allowance expenses .....	347

---

---

900-60 Exception for reasonable overtime meal allowance .....	348
900-65 Crew members on international flights need not keep travel records .....	348
<b>Subdivision 900-C—Substantiating car expenses</b>	<b>348</b>
900-70 Getting written evidence .....	348
900-75 Retaining the written evidence and odometer records .....	349
<b>Subdivision 900-D—Substantiating business travel expenses</b>	<b>350</b>
900-80 Getting written evidence .....	350
900-85 Keeping travel records .....	350
900-90 Retaining the written evidence and travel records .....	351
900-95 Meaning of <i>business travel expense</i> .....	351
<b>Subdivision 900-E—Written evidence</b>	<b>352</b>
<b>Guide to Subdivision 900-E</b>	<b>352</b>
900-100 What this Subdivision is about .....	352
<b>Operative provisions</b>	<b>353</b>
900-105 Ways of getting written evidence .....	353
900-110 Time limits .....	353
900-115 Written evidence from supplier .....	354
900-120 Written evidence of depreciation expense .....	354
900-125 Evidence of small expenses .....	355
900-130 Evidence of expenses considered otherwise too hard to substantiate .....	356
900-135 Evidence on a group certificate .....	356
<b>Subdivision 900-F—Travel records</b>	<b>357</b>
<b>Guide to Subdivision 900-F</b>	<b>357</b>
900-140 What this Subdivision is about .....	357
900-145 Purpose of a travel record .....	357
<b>Operative provisions</b>	<b>357</b>
900-150 Recording activities in travel records .....	357
900-155 Showing which of your activities were income-producing activities .....	358
<b>Subdivision 900-G—Retaining and producing records</b>	<b>358</b>
<b>Guide to Subdivision 900-G</b>	<b>358</b>
900-160 What this Subdivision is about .....	358
900-165 The retention period .....	359
<b>Operative provisions</b>	<b>359</b>
900-170 Extending the retention period if an expense is disputed .....	359
900-175 Commissioner may tell you to produce your records .....	359
900-180 How to comply with a notice .....	359

---

---

900-185 What happens if you don't comply.....	360
<b>Subdivision 900-H—Relief from effects of failing to substantiate</b>	<b>360</b>
900-195 Commissioner's discretion to review failure to substantiate .....	360
900-200 Reasonable expectation that substantiation would not be required.....	361
900-205 What if your documents are lost or destroyed? .....	361
<b>Subdivision 900-I—Award transport payments</b>	<b>362</b>
<b>Guide to Subdivision 900-I</b>	<b>362</b>
900-210 What this Subdivision is about.....	362
<b>Operative provisions</b>	<b>362</b>
900-215 Deducting an expense related to an award transport payment.....	362
900-220 Definition of <i>award transport payment</i> .....	363
900-225 Substituted industrial instruments .....	364
900-230 Changes to industrial instruments applied for before 29 October 1986.....	364
900-235 Changes to industrial instruments solely referable to matters in the instrument.....	365
900-240 Deducting in anticipation of receiving award transport payment ..	365
900-245 Effect of exception in this Subdivision on exception for small total of expenses .....	365
900-250 Effect of exception in this Subdivision on methods of calculating car expense deductions.....	366
<b>Part 5-35—Miscellaneous</b>	<b>368</b>
<b>Division 909—Regulations</b>	<b>368</b>
909-1 Regulations.....	368
<b>Chapter 6—The Dictionary</b>	<b>369</b>
<b>Part 6-1—Concepts and topics</b>	<b>369</b>
<b>Division 950—Rules for interpreting this Act</b>	<b>369</b>
950-100 What forms part of this Act.....	369
950-105 What does <i>not</i> form part of this Act .....	370
950-150 Guides, and their role in interpreting this Act .....	370
<b>Division 960—General</b>	<b>371</b>
<b>Subdivision 960-E—Entities</b>	<b>371</b>
960-100 Entities .....	371
<b>Subdivision 960-H—Abnormal trading in shares or units</b>	<b>372</b>
960-220 Meaning of <i>trading</i> .....	372
960-225 Abnormal trading .....	372
960-230 Abnormal trading—5% of shares or units in one transaction .....	373

---

---

960-235	Abnormal trading—suspected 5% of shares or units in a series of transactions.....	373
960-240	Abnormal trading—suspected acquisition or merger .....	374
960-245	Abnormal trading—20% of shares or units traded over 60 day period .....	374
<b>Division 975—Concepts about companies</b>		<b>375</b>
<b>Subdivision 975-A—General</b>		<b>375</b>
975-100	When a company is <i>in existence</i> .....	375
975-150	<i>Position to affect rights</i> in relation to a company .....	376
<b>Subdivision 975-W—Wholly-owned groups of companies</b>		<b>376</b>
975-500	Wholly-owned groups .....	376
975-505	What is a 100% subsidiary? .....	376
<b>Part 6-5—Dictionary definitions</b>		<b>378</b>
<b>Division 995—Definitions</b>		<b>378</b>
995-1	Definitions.....	378



# **Income Tax Assessment Act 1997**

**No. 38, 1997**

---

---

**An Act about income tax and related matters**

*[Assented to 17 April 1997]*

The Parliament of Australia enacts:

## **Chapter 1—Introduction and core provisions**

### **Part 1-1—Preliminary**

Section 1-1

---

## **Division 1—Preliminary**

### **Table of sections**

1-1	Short title
1-2	Commencement
1-3	Differences in style not to affect meaning

#### **1-1 Short title**

This Act may be cited as the *Income Tax Assessment Act 1997*.

#### **1-2 Commencement**

This Act commences on 1 July 1997.

#### **1-3 Differences in style not to affect meaning**

- (1) This Act contains provisions of the *Income Tax Assessment Act 1936* in a rewritten form.
- (2) If:
  - (a) that Act expressed an idea in a particular form of words; and
  - (b) this Act appears to have expressed the same idea in a different form of words in order to use a clearer or simpler style;

the ideas are not to be taken to be different just because different forms of words were used.

Note: A public or private ruling about a provision of the *Income Tax Assessment Act 1936* is taken also to be a ruling about the corresponding provision of this Act, so far as the 2 provisions express the same ideas: see sections 14ZAAM and 14ZAXA of the *Taxation Administration Act 1953*.

---

\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

---

## **Part 1-2—A Guide to this Act**

### **Division 2—How to use this Act**

#### **Table of Subdivisions**

2-A	How to find your way around
2-B	How the Act is arranged
2-C	How to identify defined terms and find the definitions
2-D	The numbering system
2-E	Status of Guides and other non-operative material

### **Subdivision 2-A—How to find your way around**

#### **2-1 The design**

This Act is designed to help you identify accurately and quickly the provisions that are relevant to your purpose in reading the income tax law.

The Act contains tables, diagrams and signposts to help you navigate your way.

You can start at Division 3 (What this Act is about) and follow the signposts as far into the Act as you need to go. You may also encounter signposts to several areas of the law that are relevant to you. Each one should be followed.

Sometimes they will lead down through several levels of detail. At each successive level, the rules are structured in a similar way. They will often be preceded by a Guide to the rules at that level. The rules themselves will usually deal first with the general or

---

\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

## Section 2-5

---

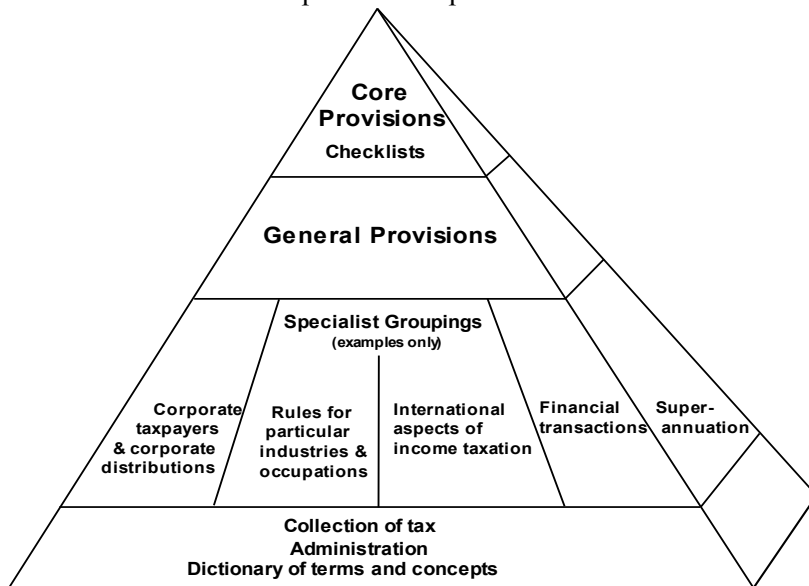
most common case and then with the more particular or special cases.

### Subdivision 2-B—How the Act is arranged

#### 2-5 The pyramid

This Act is arranged in a way that reflects the principle of moving from the general case to the particular.

In this respect, the conceptual structure of the Act is something like a pyramid. The pyramid shape illustrates the way the income tax law is organised, moving down from the central or core provisions at the top of the pyramid, to general rules of wide application and then to the more specialised topics.



---

\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

---

## **Subdivision 2-C—How to identify defined terms and find the definitions**

### **Table of sections**

2-10	When defined terms are identified
2-15	When terms are not identified
2-20	Identifying the defined term in a definition

### **2-10 When defined terms are identified**

- (1) Many of the terms used in the income tax law are defined.
- (2) Most defined terms in this Act are identified by an asterisk appearing at the start of the term: as in “\*business”. The footnote that goes with the asterisk contains a signpost to the Dictionary definitions starting at section 995-1.

### **2-15 When terms are *not* identified**

- (1) Once a defined term has been identified by an asterisk, later occurrences of the term in the same subsection are *not* usually asterisked.
- (2) Terms are *not* asterisked in the non-operative material contained in this Act.

Note: The non-operative material is described in Subdivision 2-E.

- (3) The following basic terms used throughout the Act are *not* identified with an asterisk. They fall into 2 groups:

---

\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

---

Section 2-20

---

*Key participants in the income tax system*

Item	This term:	is defined in:
1.	Australian resident	section 995-1
2.	Commissioner	section 995-1
3.	company	section 995-1
4.	entity	section 960-100
5.	individual	section 995-1
6.	partnership	section 995-1
7.	person	section 995-1
8.	trustee	section 995-1
9.	you	section 4-5

*Core concepts*

Item	This term:	is defined in:
1.	amount	section 995-1
2.	assessable income	Division 6
3.	assessment	section 995-1
4.	deduct, deduction	Division 8
5.	income tax	section 995-1
6.	income year	section 995-1
7.	taxable income	section 4-15
8.	this Act	section 995-1

**2-20 Identifying the defined term in a definition**

Within a definition, the defined term is identified by ***bold italics***.

---

\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

## **Subdivision 2-D—The numbering system**

### **Table of sections**

2-25	Purposes
2-30	Gaps in the numbering

### **2-25 Purposes**

Two main purposes of the numbering system in this Act are:

- To indicate the relationship between units at different levels.  
  
For example, the number of Part 2-15 indicates that the Part is in Chapter 2. Similarly, the number of section 165-70 indicates that the section is in Division 165.
- To allow for future expansion of the Act. The main technique here is leaving gaps between numbers.

### **2-30 Gaps in the numbering**

There are gaps in the numbering system to allow for the insertion of new Divisions and sections.

Except where the gaps follow a regular pattern, notes are included at the end of one group of units to indicate the number of the next unit.

---

\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

---

## Section 2-35

---

### **Subdivision 2-E—Status of Guides and other non-operative material**

#### **Table of sections**

2-35	Non-operative material
2-40	Guides
2-45	Other material

#### **2-35 Non-operative material**

In addition to the operative provisions themselves, this Act contains other material to help you identify accurately and quickly the provisions that are relevant to you and to help you understand them.

This other material falls into 2 main categories.

#### **2-40 Guides**

The first is the “Guides”. A **Guide** consists of sections under a heading indicating that what follows is a Guide to a particular Subdivision, Division etc.

Guides form part of this Act but are kept separate from the operative provisions. In interpreting an operative provision, a Guide may only be considered for limited purposes. These are set out in section 950-150.

#### **2-45 Other material**

The other category consists of material such as notes and examples. These also form part of the Act. They are distinguished by type size from the operative provisions, but are not kept separate from them.

---

\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

---

---

Section 3-1

---

## Division 3—What this Act is about

### Table of sections

3-1	What this Act is about
3-5	Annual income tax
3-10	Your other obligations as a taxpayer
3-15	Your obligations <i>other than</i> as a taxpayer

### 3-1 What this Act is about

This Act is mainly about income tax, and this Division is concerned only with income tax.

However, this Act also deals with a variety of other topics that may affect you:

Item	For a guide to this topic:	See:
1.	Medicare levy	Division 785
2.	HECS (Higher Education Contribution Scheme)	Division 786
3.	Withholding taxes	
	• on dividends, interest and royalties	Division 765
	• on payments for mining operations on Aboriginal land	Division 766
	• on interest paid by companies on bearer debentures	Division 767
	• on certain income notionally accruing under deferred interest investments	Division 768

### 3-5 Annual income tax

- (1) Income tax is payable for each year by each individual and company, and by some other entities.

---

\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

---

## Section 3-10

---

Note 1: Individuals who are Australian residents, and some trustees, are also liable to pay Medicare levy for each year. See Division 785.

Note 2: Income tax is imposed by the *Income Tax Act 1986* and the other Acts referred to in the definition of **income tax** in section 995-1.

(2) Most entities have to pay *instalments* of income tax before the income tax they *actually* have to pay can be worked out.

(3) This Act answers these questions:

1. What instalments of income tax do you have to pay? When and how do you pay them?

See section 750-1.

2. How do you work out how much income tax you must pay?

See Division 4, starting at section 4-1.

3. What happens if your income tax is *more* than the instalments you have paid? When and how must you pay the rest?

See Division 1 (sections 204 to 220) of Part VI of the *Income Tax Assessment Act 1936*.

4. What happens if your income tax is *less* than the instalments you have paid? How do you get a refund?

See section 750-20.

5. What are your *other* obligations as a taxpayer, besides paying instalments and the rest of your income tax?

See section 3-10.

6. Do you have any other obligations under the income tax law?

See section 3-15.

7. If a dispute between you and the Commissioner of Taxation cannot be settled by agreement, what procedures for objection, review and appeal are available?

See Part IVC (sections 14ZL to 14ZZS) of the *Taxation Administration Act 1953*.

---

\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

### **3-10 Your other obligations as a taxpayer**

- (1) Besides paying instalments and the rest of your income tax, your main obligations as a taxpayer are:
  - (a) to keep records and provide information as required by:
    - the *Income Tax Assessment Act 1936*; and
    - Division 900 (which sets out substantiation rules) of this Act; and
  - (b) to lodge returns as required by:
    - the *Income Tax Assessment Act 1936*.

#### *Tax file numbers*

- (2) Under Part VA of the *Income Tax Assessment Act 1936*, a tax file number can be issued to you. You are not obliged to apply for a tax file number. However, if you do not quote one in certain situations:
  - you may become liable for instalments of income tax that would not otherwise have been payable;
  - the amount of certain of your instalments of income tax may be increased.

### **3-15 Your obligations *other than* as a taxpayer**

Your main obligations under the income tax law, other than as a taxpayer are:

- in certain situations, to deduct from money you owe to another person, and to remit to the Commissioner, instalments of income tax payable by that person.

See Part 4-5 (Collection of income tax instalments),  
starting at section 750-1.

---

\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Section 4-1

---

## **Part 1-3—Core provisions**

### **Division 4—How to work out the income tax payable on your taxable income**

#### **Table of sections**

4-1	Who must pay income tax
4-5	Meaning of <i>you</i>
4-10	How to work out how much income tax you must pay
4-15	How to work out your taxable income

#### **4-1 Who must pay income tax**

Income tax is payable by each individual and company, and by some other entities.

Note: The actual amount of income tax payable may be nil.

For a list of the entities that must pay income tax, see Division 9, starting at section 9-1.

#### **4-5 Meaning of *you***

If a provision of this Act uses the expression ***you***, it applies to entities generally, unless its application is expressly limited.

Note: The expression ***you*** is not used in provisions that apply only to entities that are *not* individuals.

---

\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

#### **4-10 How to work out how much income tax you must pay**

- (1) You must pay income tax for each year ending on 30 June, called the *financial year*.
- (2) Your income tax is worked out by reference to your taxable income for the *income year*. The income year is the same as the \*financial year, except in these cases:
  - (a) for a company, the income year is the *previous* financial year;
  - (b) if you adopt an accounting period ending on a day other than 30 June, the income year is the accounting period adopted in place of the financial year or previous financial year, as appropriate.

Note: The Commissioner can allow you to adopt an accounting period ending on a day other than 30 June. See section 18 of the *Income Tax Assessment Act 1936*.

- (3) Work out your income tax for the \*financial year as follows:

$$\text{income tax} = (\text{taxable income} \times \text{rate}) - \text{tax offsets}$$

##### *Method statement*

*Step 1.* Work out your taxable income for the income year.

To do this, see section 4-15.

---

\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Section 4-10

---

*Step 2.* Work out your basic income tax liability on your taxable income using:

- (a) the income tax rate or rates that apply to you for the income year; and
- (b) any special provisions that apply to working out that liability.

See the *Income Tax Rates Act 1986*.

*Step 3.* Work out your tax offsets for the income year. A ***tax offset*** reduces the amount of income tax you have to pay.

For the list of tax offsets, see section 13-1.

*Step 4.* Subtract your \*tax offsets from your basic income tax liability. The result is how much income tax you owe for the \*financial year. (If your total tax offsets exceed your basic income tax liability, you are not entitled to a refund, or to offset the excess against any other liability.)

Note: Some tax offsets can be carried forward to a later year. See, for example, section 160AFE of the *Income Tax Assessment Act 1936*, which deals with the carry forward of excess foreign tax credits.

- (4) For some entities, some or all of their income tax for the \*financial year is worked out by reference to something other than taxable income for the income year.

See section 9-5.

---

\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

---

## 4-15 How to work out your taxable income

- (1) Work out your *taxable income* for the income year like this:

$$\text{taxable income} = \text{assessable income} - \text{deductions}$$

### *Method statement*

*Step 1.* Add up all your assessable income for the income year.

To find out about your assessable income, see Division 6.

*Step 2.* Add up your deductions for the income year.

To find out what you can deduct, see Division 8.

*Step 3.* Subtract your deductions from your assessable income (unless they exceed it). The result is your taxable income. (If the deductions equal or exceed the assessable income, you don't have a taxable income.)

Note: If the deductions exceed the assessable income, you may have a tax loss which you may be able to deduct in a later income year: see Division 36.

---

\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Section 4-15

---

- (2) There are cases where taxable income is worked out in a special way:

<b>Item</b>	<b>For this case ...</b>	<b>See:</b>
1.	A company does not maintain continuity of ownership and control during the income year and does not continue to carry on the same business	Subdivision 165-B
2.	A company becomes a PDF (pooled development fund) during the income year, and the PDF component for the income year is a nil amount	section 124ZTA of the <i>Income Tax Assessment Act 1936</i>
3.	A shipowner or charterer: <ul style="list-style-type: none"> <li>• has its principal place of business outside Australia; and</li> <li>• carries passengers, freight or mail shipped in Australia</li> </ul>	section 129 of the <i>Income Tax Assessment Act 1936</i>
4.	An insurer who is not an Australian resident enters into insurance contracts connected with Australia	sections 142 and 143 of the <i>Income Tax Assessment Act 1936</i>
5.	The Commissioner makes a default or special assessment of taxable income	sections 167 and 168 of the <i>Income Tax Assessment Act 1936</i>

---

\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

---

## Division 6—Assessable income and exempt income

### Guide to Division 6

#### Table of sections

6-1      Diagram showing relationships among concepts in this Division

#### Operative provisions

6-5      Income according to ordinary concepts (*ordinary income*)  
6-10     Other assessable income (*statutory income*)  
6-15     What is *not* assessable income  
6-20     Exempt income  
6-25     Relationships among various rules about ordinary income

---

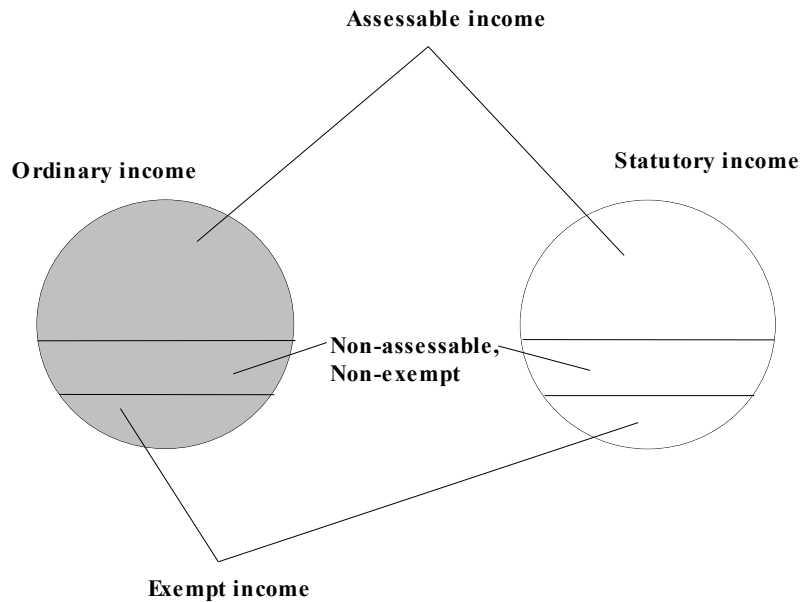
\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

---

Section 6-1

---

**6-1 Diagram showing relationships among concepts in this Division**



- (1) Assessable income consists of \*ordinary income and \*statutory income.
- (2) Some \*ordinary income, and some \*statutory income, is \*exempt income.
- (3) \*Exempt income is not assessable income.
- (4) Some \*ordinary income, and some \*statutory income, is neither assessable income nor \*exempt income.

---

\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

---

## Operative provisions

### 6-5 Income according to ordinary concepts (*ordinary income*)

- (1) Your **assessable income** includes income according to ordinary concepts, which is called **ordinary income**.

Note: Some of the provisions about assessable income listed in section 10-5 may affect the treatment of ordinary income.

- (2) If you are an Australian resident, your assessable income includes the \*ordinary income you \*derived directly or indirectly from all sources, whether in or out of Australia, during the income year.
- (3) If you are *not* an Australian resident, your assessable income includes:
- (a) the \*ordinary income you \*derived directly or indirectly from all \*Australian sources during the income year; and
  - (b) other \*ordinary income that a provision includes in your assessable income for the income year on some basis other than having an \*Australian source.
- (4) In working out whether you have **derived** an amount of \*ordinary income, and (if so) when you **derived** it, you are taken to have received the amount as soon as it is applied or dealt with in any way on your behalf or as you direct.

### 6-10 Other assessable income (*statutory income*)

- (1) Your **assessable income** also includes some amounts that are *not* \*ordinary income.

Note: These are included by provisions about assessable income. For a summary list of these provisions, see section 10-5.

- (2) Amounts that are *not* \*ordinary income, but are included in your assessable income by provisions about assessable income, are called **statutory income**.

---

\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

## Section 6-15

---

Note: Many provisions in the summary list in section 10-5 contain rules about *ordinary income*. These rules do not change its character as ordinary income.

- (3) If an amount would be \*statutory income apart from the fact that you have not received it, it becomes statutory income as soon as it is applied or dealt with in any way on your behalf or as you direct.
- (4) If you are an Australian resident, your assessable income includes your \*statutory income from all sources, whether in or out of Australia.
- (5) If you are *not* an Australian resident, your assessable income includes:
  - (a) your \*statutory income from all \*Australian sources; and
  - (b) other \*statutory income that a provision includes in your assessable income on some basis other than having an \*Australian source.

### 6-15 What is *not* assessable income

- (1) If an amount is *not* \*ordinary income, and is *not* \*statutory income, it is not ***assessable income*** (so you do not have to pay income tax on it).

---

\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

---

## Section 6-20

---

- (2) If an amount is \*exempt income, it is not **assessable income**.

Note: If an amount is exempt income, there are other consequences besides it being exempt from income tax. For example:

- the amount may be taken into account in working out the amount of a tax loss (see section 36-10);
- you cannot deduct as a general deduction a loss or outgoing incurred in deriving the amount (see Division 8).

To find out about exempt income, see section 6-20.

### 6-20 Exempt income

- (1) An amount of \*ordinary income or \*statutory income is **exempt income** if it is made exempt from income tax by a provision of this Act.

For summary lists of provisions about exempt income, see sections 11-5, 11-10 and 11-15.

- (2) \*Ordinary income is also **exempt income** to the extent that this Act excludes it (expressly or by implication) from being assessable income.

Note: Some express provisions result in ordinary income being neither assessable income nor exempt income. See, for example, section 121EG of the *Income Tax Assessment Act 1936*, dealing with offshore banking units.

- (3) By contrast, an amount of \*statutory income is **exempt income** only if it is made exempt from income tax by a provision of this Act outside this Division.

---

\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

---

Section 6-25

---

**6-25 Relationships among various rules about ordinary income**

- (1) Sometimes more than one rule includes an amount in your assessable income:

- the same amount may be \*ordinary income and may also be included in your assessable income by one or more provisions about assessable income; or
- the same amount may be included in your assessable income by more than one provision about assessable income.

For a summary list of the provisions about assessable income,  
see section 10-5.

However, the amount is included only once in your assessable income for an income year, and is then not included in your assessable income for any other income year.

- (2) Unless the contrary intention appears, the provisions of this Act (outside this Part) prevail over the rules about \*ordinary income.

Note: This Act contains some specific provisions about how far the rules about ordinary income prevail over the other provisions of this Act.

---

\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

---

## Division 8—Deductions

### Table of sections

8-1	General deductions
8-5	Specific deductions
8-10	No double deductions

### 8-1 General deductions

- (1) You can **deduct** from your assessable income any loss or outgoing to the extent that:
  - (a) it is incurred in gaining or producing your assessable income; or
  - (b) it is necessarily incurred in carrying on a \*business for the purpose of gaining or producing your assessable income.
- (2) However, you cannot deduct a loss or outgoing under this section to the extent that:
  - (a) it is a loss or outgoing of capital, or of a capital nature; or
  - (b) it is a loss or outgoing of a private or domestic nature; or
  - (c) it is incurred in relation to gaining or producing your \*exempt income; or
  - (d) a provision of this Act prevents you from deducting it.

For a summary list of provisions about deductions, see section 12-5.
- (3) A loss or outgoing that you can deduct under this section is called a **general deduction**.

### 8-5 Specific deductions

- (1) You can also **deduct** from your assessable income an amount that a provision of this Act (outside this Division) allows you to deduct.

---

\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

## Section 8-10

---

- (2) Some provisions of this Act prevent you from deducting an amount that you could otherwise deduct, or limit the amount you can deduct.
- (3) An amount that you can deduct under a provision of this Act (outside this Division) is called a *specific deduction*.

For a summary list of provisions about deductions, see section 12-5.

### **8-10 No double deductions**

If 2 or more provisions of this Act allow you deductions in respect of the same amount (whether for the same income year or different income years), you can deduct only under the provision that is most appropriate.

---

\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

---

## Part 1-4—Checklists of what is covered by concepts used in the core provisions

### Division 9—Entities that must pay income tax

#### Table of sections

9-1	List of entities
9-5	Entities that work out their income tax by reference to something other than taxable income

#### 9-1 List of entities

Income tax is payable by the entities listed in the table.

Provisions of the *Income Tax Assessment Act 1997* are identified in normal text. The other provisions, **in bold**, are provisions of the *Income Tax Assessment Act 1936*.

Item	Income tax is payable by this kind of entity:	because of this provision:
1.	An individual	section 4-1
2.	A company, that is: <ul style="list-style-type: none"><li>• a body corporate; or</li><li>• an unincorporated body (except a partnership)</li></ul>	section 4-1
3.	A corporate limited partnership (as defined in section 94D)	<b>section 94J</b>
4.	A mutual insurance association (as described in section 121)	<b>section 121</b>
5.	A trustee (except one covered by a later item in this table), but only in respect of some kinds of income of the trust	<b>sections 98, 99, 99A and 102</b>

\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

## Section 9-5

Item	Income tax is payable by this kind of entity:	because of this provision:
6.	The trustee of a corporate unit trust	<b>section 102K</b>
7.	The trustee of a public trading trust	<b>section 102S</b>
8.	The trustee of a complying superannuation fund	<b>section 278</b>
9.	The trustee of a non-complying superannuation fund	<b>section 286</b>
10.	The trustee of a complying approved deposit fund	<b>section 289</b>
11.	The trustee of a non-complying approved deposit fund	<b>section 294</b>
12.	The trustee of a pooled superannuation trust	<b>section 296</b>

### 9-5 Entities that work out their income tax by reference to something other than taxable income

- (1) For some entities, some or all of their income tax for the \*financial year is worked out as described in the table.

Provisions of the *Income Tax Assessment Act 1997* are identified in normal text. The other provisions, **in bold**, are provisions of the *Income Tax Assessment Act 1936*.

Item	This kind of entity is liable to pay income tax worked out by reference to:	See:
1.	A trustee covered by item 5 in the table in section 9-1 is liable to pay income tax worked out by reference to the net income of the trust for the income year.	<b>sections 98, 99 and 99A</b>
2.	The trustee of a corporate unit trust is liable to pay income tax worked out by reference to the net income of the trust for the income year.	<b>section 102K</b>

\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Section 9-5

Item	This kind of entity is liable to pay income tax worked out by reference to:	See:
3.	The trustee of a public trading trust is liable to pay income tax worked out by reference to the net income of the trust for the income year.	<b>section 102S</b>
4.	An entity that is liable to pay income tax (worked out by reference to taxable income or otherwise) is also liable to pay income tax worked out by reference to diverted income or diverted trust income for the income year.	<b>section 121H</b>
5.	An Australian insurer that re-insures overseas can elect to pay, as agent for the re-insurer, income tax worked out by reference to the amount of the re-insurance premiums.	<b>section 148</b>

- (2) For entities covered by an item in the table in subsection (1), the **income year** is the same as the \*financial year, except in these cases:
- (a) for a company, or an entity covered by item 2 or 3 in the table, the income year is the *previous* financial year;
  - (b) if an entity adopts an accounting period ending on a day other than 30 June, the income year is the accounting period adopted in place of the financial year or previous financial year, as appropriate.

Note: The Commissioner can allow an entity to adopt an accounting period ending on a day other than 30 June. See section 18 of the *Income Tax Assessment Act 1936*.

---

\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Section 10-5

---

**Division 10—Particular kinds of assessable income**

**10-5 List of provisions about assessable income**

The provisions set out in the table:

- include in your assessable income amounts that are *not* \*ordinary income; and
- vary or replace the rules that would otherwise apply for certain kinds of \*ordinary income.

Provisions of the *Income Tax Assessment Act 1997* are identified in normal text. The other provisions, **in bold**, are provisions of the *Income Tax Assessment Act 1936*.

<b>accrued leave transfer payments</b>	
.....	<b>26(ec)</b>
<b>allowances</b>	
<i>see employment</i>	
<b>annual leave</b>	
<i>see leave payments</i>	
<b>annuities</b>	
.....	<b>27H</b>
<b>approved deposit fund (ADFs)</b>	
<i>see superannuation</i>	
<b>attributable income</b>	
<i>see controlled foreign corporations and foreign investment funds</i>	

---

\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

---

Section 10-5

<b>avoidance of tax</b>	
general .....	<b>177F</b>
diversion of income .....	<b>121H</b>
profits shifted out of Australia .....	<b>136AD,</b> <b>136AE</b>
see also <i>transfers of income</i>	
<b>bad debt</b>	
debt recovered after a deduction allowed for a bad debt ...	<b>63(3)</b>
<b>balancing adjustment</b>	
see <i>depreciation, industrial property, investments, mining,</i> <i>research &amp; development, scientific research and timber</i>	
<b>banking</b>	
offshore banking activities, income from .....	<b>121EG(1)</b>
offshore banking unit, deemed interest on payments to by owner .....	<b>121EK</b>
<b>barter transactions</b>	
.....	<b>21, 21A,</b> <b>26(e)</b>
<b>beneficiaries</b>	
see <i>trusts</i>	
<b>benefits</b>	
business, non-cash .....	<b>21A</b>
consideration, non-cash .....	<b>21</b>
meals you provide in an in-house dining facility .....	<b>26AAAC</b>
see also <i>employment and superannuation</i>	
<b>bonus shares</b>	
see <i>shares</i>	
<b>bounties</b>	
.....	<b>26(g)</b>
<b>capital gains</b>	
.....	<b>160ZO</b>
see also <i>insurance</i>	

---

\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Section 10-5

---

<b>car expenses</b>	
cents per kilometres reimbursement of .....	<b>26(eaa)</b>
<b>CFCs</b>	
<i>see controlled foreign corporations</i>	
<b>charters</b>	
<i>see shipping</i>	
<b>child</b>	
non-trust income of, unearned .....	<b>102AE</b>
trust income of, unearned .....	<b>102AG</b>
<b>company</b>	
<i>see controlled foreign corporations, co-operative company, directors, dividends, liquidation, shareholders and shares</i>	
<b>compensation</b>	
deductible loss or outgoing, insurance or indemnity for ....	<b>26(j)</b>
lessee pays for non-compliance with covenant to repair ...	<b>26(l)</b>
live stock or trees, recoveries for loss of .....	<b>26B</b>
profit or income, insurance or indemnity for loss of .....	<b>26(j)</b>
trading stock, insurance or indemnity for loss of .....	<b>26(j)</b>
<i>see also embezzlement, insurance, live stock and scientific research</i>	
<b>consideration</b>	
<i>see benefits</i>	
<b>controlled foreign corporations (CFCs)</b>	
attributable income of .....	<b>456 to 459A</b>
<i>see also dividends and taxes</i>	
<b>co-operative company</b>	
receipts of .....	<b>119</b>
<b>credit union</b>	
<i>see co-operative company</i>	

---

\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

---

Section 10-5

<b>currency gains</b>	
<i>see foreign exchange</i>	
<b>death</b>	
<i>see trusts</i>	
<b>debt/equity swap</b>	
<i>see shares and units</i>	
<b>defence forces</b>	
allowances and benefits for service as a member of .....	<b>26(ea)</b>
<b>depreciation</b>	
excess over depreciated value at disposal of property, treatment of .....	<b>59</b>
pooled depreciated property, profits on the disposal, loss or destruction of .....	<b>62AAT</b>
<b>development allowance</b>	
partnership property acquired under a pre-27 February 1992 contract .....	<b>82AHA(5), (6)</b>
partnership which claimed a development allowance deduction, disposal of interest in .....	<b>82AJ</b>
<b>directors</b>	
excessive remuneration or retirement payment from company .....	<b>109</b>
<b>distributions</b>	
<i>see dividends</i>	
<b>dividends</b>	
general .....	<b>44(1)</b>
distribution from a controlled foreign corporation .....	<b>47A(1)</b>
foreign taxes on, grossing up of .....	<b>6AC</b>
franked dividends, credits on .....	<b>160AQT</b>
repayments of foreign income tax deducted from .....	<b>26A</b>
<i>see also liquidation</i>	

---

\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Section 10-5

---

<b>drought investment allowance</b>	
partnership which claimed drought investment allowance deduction, disposal of interest in .....	<b>656</b>
<b>elections</b>	
reimbursement of expenses of .....	<b>74(2), 74A(4)</b>
<b>electricity connections</b>	
recovery of expense of .....	<b>70A(5)</b>
<b>eligible termination payments (ETPs)</b>	
.....	<b>27A to 27H</b>
<b>embezzlement</b>	
recovery of loss from .....	<b>26(k)</b>
<b>employees</b>	
see <i>shares</i>	
<b>employment</b>	
allowances and benefits in relation to employment or rendering services .....	<b>26(e), 26(ea)</b>
return to work payments .....	<b>26(eb)</b>
see also <i>accrued leave transfer payments, eligible termination payments</i> and <i>leave payments</i>	
<b>FIFs</b>	
see <i>foreign investment funds</i>	
<b>films</b>	
Australian, proceeds of investment in .....	<b>26AG</b>
<b>foreign exchange</b>	
gains .....	<b>82Y</b>
<b>foreign investment funds (FIFs)</b>	
attributable income of .....	<b>529</b>
foreign tax paid in respect of a foreign investment fund attribution account payment .....	<b>26D</b>
see also <i>taxes</i>	

---

\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Section 10-5

<b>franked dividends</b>	
<i>see dividends</i>	
<b>improvements</b>	
<i>see leases</i>	
<b>imputation</b>	
<i>see dividends</i>	
<b>income equalisation deposits</b>	
withdrawals from .....	<b>159GD</b>
<b>industrial property</b>	
consideration for disposal of .....	<b>124P</b>
<i>see also research &amp; development</i>	
<b>infrastructure borrowings</b>	
<i>see interest</i>	
<b>insurance</b>	
bonuses .....	<b>26(i), 26AH</b>
company, demutualisation of .....	<b>121AT</b>
foreign life assurance policy .....	<b>529</b>
life assurance, transfer of contributions by superannuation fund or approved deposit fund to .....	<b>275</b>
payments from a non-resident reinsurer in respect of a loss .....	<b>148</b>
premiums in respect of Australian business received by non-resident insurers .....	<b>143</b>
premiums paid to a non-resident for reinsurance .....	<b>148</b>
premiums paid to mutual insurance association .....	<b>121</b>
premiums payable to a non-resident for insurance of property in Australia .....	<b>142(1)</b>
premiums payable to a non-resident for insuring an event that can only happen in Australia .....	<b>142(1)</b>
premiums payable to a non-resident under an insurance contract with a resident .....	<b>142(2)</b>

---

\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Section 10-5

---

rebates and premiums refunded to a superannuation fund trustee .....	<b>279A(1)</b>
see also <i>compensation, embezzlement and life assurance companies</i>	
<b>interest</b>	
infrastructure borrowings, on .....	<b>159GZZZ ZG</b>
loans raised in Australia by foreign governments, on .....	<b>27</b>
overpaid tax, on .....	<b>26(jb)</b>
qualifying securities, on .....	<b>159GQ, 159GW(1)</b>
see also <i>co-operative companies and leases</i>	
<b>investments</b>	
non-interest bearing Commonwealth securities, gains on disposal or redemption of .....	<b>26C</b>
prizes from investment-related lotteries .....	<b>26AJ</b>
qualifying securities, payments to partial residents made under .....	<b>159GW(2)</b>
qualifying securities, amount assessable to issuer of .....	<b>159GT(1B)</b>
qualifying securities, balancing adjustment on the transfer of .....	<b>159GS</b>
securities, variation in terms of .....	<b>159GV(2)</b>
securities lending arrangements .....	<b>26BC</b>
traditional securities, gains on the disposal or redemption of .....	<b>26BB</b>
see also <i>films and interest</i>	
<b>leases</b>	
crown leases used for primary production, assignment of .....	<b>88A(3)</b>
improvements made by lessee to land .....	<b>87</b>
interest component of payments under non-leveraged finance leases .....	<b>159GK</b>

---

\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Section 10-5

lessees' payments for non-compliance with covenant to repair .....	<b>26(l)</b>
partnership leasing property under non-leveraged finance lease, new partner or contribution of capital since 14 May 1985 .....	<b>159GO</b>
premiums on old leases .....	<b>84</b>
premiums relating to a grant or assignment .....	<b>26AB</b>
profit on disposal of previously leased motor vehicles .....	<b>26AAB</b>
<b>leave payments</b>	
accrued leave transfer payment .....	<b>26(ec)</b>
annual leave, received in lieu of retirement or termination .....	<b>26AC</b>
long service leave, received in lieu of retirement or termination .....	<b>26AD</b>
<b>life assurance companies</b>	
consideration for transfer of equity in protection fund of .....	<b>116DF</b>
disposal of assets of .....	<b>116CB(3), 116CC(2), 116CD, 116GA(2), 116GB</b>
winding-up payments out of protection fund of .....	<b>116DD</b>
<b>liquidation</b>	
distribution to a shareholder in winding up a company .....	<b>47(1)</b>
<b>live stock</b>	
death or destruction of .....	<b>36, 36AAA, 36AA</b>
departing Australia and .....	<b>36, 36AAA, 36AA</b>
insolvency, and .....	<b>36, 36AAA, 36AA</b>
profits on death or disposal of .....	<b>36, 36AAA, 36AA</b>

\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Section 10-5

---

	see also <i>compensation</i> and <i>trading stock</i>	
<b>loans</b>		
	fees for the procurement of .....	<b>26(h)</b>
	see also <i>interest</i> and <i>shareholders</i>	
<b>long service leave</b>		
	see <i>leave payments</i>	
<b>losses</b>		
	see <i>compensation</i>	
<b>lotteries</b>		
	see <i>investments</i>	
<b>meals</b>		
	see <i>benefits</i>	
<b>mining</b>		
	balancing adjustment on disposal of property .....	330-485
<b>minors</b>		
	see <i>child</i>	
<b>motor vehicles</b>		
	see <i>car expenses</i> and <i>leases</i>	
<b>mutual insurance</b>		
	see <i>insurance</i>	
<b>non-cash benefits</b>		
	see <i>benefits</i> and <i>employment</i>	
<b>offshore banking units</b>		
	see <i>banking</i>	
<b>partnerships</b>		
	net income of, partner's interest in .....	<b>92(1)</b>
	uncontrolled partnership income, effect of .....	<b>94</b>
	see also <i>development allowance</i> , <i>drought investment allowance</i> and <i>leases</i>	
<b>petroleum</b>		
	resource rent tax, recovery of .....	330-350(3)
	see also <i>mining</i>	

---

\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Section 10-5

---

<b>pooled depreciated property</b>	
<i>see depreciation</i>	
<b>premiums</b>	
<i>see insurance, leases and superannuation</i>	
<b>prizes</b>	
<i>see investments</i>	
<b>profits</b>	
business partly in Australia and partly overseas .....	<b>43(1)</b>
profit-making undertakings or the sale of property acquired for profit-making by sale .....	<b>25A</b>
<i>see also avoidance of tax</i>	
<b>property</b>	
<i>see profits and trusts</i>	
<b>quarrying</b>	
<i>see mining</i>	
<b>rates</b>	
refund of .....	<b>72(2)</b>
<b>reimbursements</b>	
<i>see car expenses, dividends, elections, electricity         connections, embezzlement, insurance, petroleum and         taxes</i>	
<b>reinsurance</b>	
<i>see insurance</i>	
<b>research &amp; development</b>	
consideration for loss or disposal of plant or buildings used for .....	<b>73B(23) to (27C), 73G(4)</b>
return on .....	<b>73B(27A), (27C)</b>
transferee of property used for, effect of disposal or change of use by .....	<b>73F(10)</b>

---

\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Section 10-5

---

<b>residual value</b>	
<i>see industrial property</i>	
<b>retirement payments</b>	
<i>see directors, leave payments and shareholders</i>	
<b>rights to income</b>	
<i>see transfers of income</i>	
<b>roads</b>	
<i>see timber</i>	
<b>royalties</b>	
.....	<b>26(f)</b>
<b>schemes</b>	
<i>see avoidance of tax</i>	
<b>scientific research</b>	
consideration for disposal or destruction of buildings	
acquired for scientific research .....	<b>73A(4)</b>
<b>securities</b>	
<i>see investments</i>	
<b>services</b>	
<i>see co-operative companies, employment, loans and trusts</i>	
<b>shareholders</b>	
excessive remuneration or retirement payment from	
company .....	<b>109</b>
loans, payments and credits from company .....	<b>108</b>
<i>see also dividends</i>	
<b>shares</b>	
acquired in a debt/equity swap, profit on the disposal	
cancellation or redemption of .....	<b>63E(4)</b>
bonus shares, cost of .....	<b>6BA</b>
buy-backs .....	<b>159GZZZJ</b>
	<b>to</b>
	<b>159GZZZ</b>
	<b>T</b>

---

\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Section 10-5

employee share acquisition schemes .....	<b>26AAC, 139 to 139GH</b>
holding company shares held by a subsidiary, cancellation of .....	<b>159GZZZ C to 159GZZZI</b>
see also <i>dividends</i>	
<b>shipping</b>	
goods shipped in Australia, amounts paid to foreign shipowners and charterers for .....	<b>129</b>
<b>subsidies</b>	
.....	<b>26(g)</b>
<b>superannuation</b>	
benefits received from older superannuation funds .....	<b>26AF, 26AFA, 26AFB</b>
complying fund becomes non-complying, effect of .....	<b>288A</b>
contributions to a superannuation fund .....	<b>278, 281, 286, 288</b>
contributions to an approved deposit fund .....	<b>289, 290, 294, 295</b>
non-resident fund becoming resident, effect of .....	<b>288B</b>
payments and benefits from a fund .....	<b>82AAQ</b>
trustee's liability to pay tax .....	<b>278, 286, 289, 294, 296</b>
see also <i>insurance</i>	
<b>tax avoidance</b>	
see <i>avoidance of tax and transfers of income</i>	
<b>taxes</b>	
refund of .....	<b>72(2)</b>
tax related expenses, recovery of .....	<b>69(8)</b>

---

\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Section 10-5

---

see also *dividends, foreign investment funds and interest*

**termination of employment**

see *directors, eligible termination payments, leave payments and shareholders*

**timber**

access road, balancing adjustment on the disposal of ..... **124G**  
mill, balancing adjustment on the disposal of ..... **124JB**

**trading stock**

change in interests in ..... **36A**  
death of trader and ..... **37**  
difference between opening and closing value of ..... **28**  
disposal of for more than an arm's length price ..... **31C**  
disposal of outside ordinary course of business ..... **36(1)**  
see also *compensation*

**transfers of income**

consideration for transfer of right to income ..... **102CA**  
payments for transfer or disposal of property ..... **262**  
transferee, effect on of transfer of right to income ..... **102C**  
transferor, effect on of transfer of right to income ..... **102B**

**travel expenses**

see *car expenses*

**trusts**

beneficiary under legal disability or with a vested and  
indefeasible interest in trust income ..... **100**  
deceased estates, income of ..... **101A**  
deceased estates, your interest in income of ..... **26(b)**  
discretionary trusts ..... **101**  
net income of a trust estate, your present entitlement to .... **26(b), 97,**  
**101**  
non-resident beneficiaries, liability to tax of ..... **98A**  
non-resident trust estates to which you have transferred  
property or services, income of ..... **102AAZD**

---

\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Section 10-5

---

property of applied for benefit of beneficiaries .....	<b>99B</b>
trust estate includes income from another trust estate .....	<b>94(5)</b>
trustees' liability to tax .....	<b>98, 99, 99A, 102, 102K, 102S</b>
see also <i>avoidance of tax</i> and <i>superannuation</i>	
<b>unearned income</b>	
see <i>child</i>	
<b>units</b>	
acquired in a debt/equity swap, profit on the disposal, cancellation or redemption of .....	<b>63E(4)</b>
<b>winding-up</b>	
see <i>insurance</i> and <i>liquidation</i>	
<b>wool clips</b>	
double wool clips, treatment of .....	<b>26BA</b>

---

\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

---

## Section 11-1

---

### Division 11—Lists of classes of exempt income

#### Table of sections

11-1	Overview
11-5	Entities that are exempt, no matter what kind of ordinary or statutory income they have
11-10	Ordinary or statutory income which is exempt, no matter whose it is
11-15	Ordinary or statutory income which is exempt only if it is derived by certain entities

#### 11-1 Overview

\*Ordinary income or \*statutory income which is exempt from income tax can be divided into 3 main classes:

- (a) ordinary or statutory income of entities that are exempt, no matter what kind of ordinary or statutory income they have (see table in section 11-5);
- (b) ordinary or statutory income which is exempt, no matter whose it is (see table in section 11-10);
- (c) ordinary or statutory income which is exempt only if it is \*derived by certain entities (see table in section 11-15).

#### 11-5 Entities that are exempt, no matter what kind of ordinary or statutory income they have

Provisions of the *Income Tax Assessment Act 1997* are identified in normal text. The other provisions, **in bold**, are provisions of the *Income Tax Assessment Act 1936*.

---

\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

---

Section 11-5

<b>charity, education, religion or science</b>	
charitable fund, public .....	23(j)
charitable institution .....	23(e)
educational institution, public .....	23(e)
religious institution .....	23(e)
scientific institution .....	23(e)
scientific research fund .....	23(j)
scientific society etc. ....	23(g)(ii)
<b>community service</b>	
community service society etc. ....	23(g)(v)
<b>employees and employers</b>	
employee association .....	23(f)
employer association .....	23(f)
trade union .....	23(f)
<b>film</b>	
Australian Film Finance Corporation .....	23(k)
<b>finance</b>	
friendly society .....	23(g)(i)
<b>government</b>	
local governing body .....	23(d)
municipal corporation .....	23(d)
public authority .....	23(d)
state/territory bodies .....	24AK to 24AZ
<b>health</b>	
health benefits organisation .....	23(eb)
hospital .....	23(ea)
medical benefits organisation .....	23(eb)

\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Section 11-5

---

**mining**

British Phosphate Commissioner Banaba Contingency Fund .....	23(jf)
Phosphate Mining Company of Christmas Island .....	23(je)

**primary or secondary resources and tourism**

agricultural society etc. ....	23(h)
aviation society etc. ....	23(h)
horticultural society etc. ....	23(h)
industrial society etc. ....	23(h)
manufacturing society etc. ....	23(h)
pastoral society etc. ....	23(h)
tourism society etc. ....	23(h)
viticultural society etc. ....	23(h)

**sports, culture or recreation**

animal racing society etc. ....	23(g)(iv)
art society etc. ....	23(g)(ii)
game society etc. ....	23(g)(iii)
literature society etc. ....	23(g)(ii)
music society etc. ....	23(g)(ii)
sport society etc. ....	23(g)(iii)

**superannuation and related business**

constitutionally protected funds .....	271A
----------------------------------------	------

---

\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

## **11-10 Ordinary or statutory income which is exempt, no matter whose it is**

Provisions of the *Income Tax Assessment Act 1997* are identified in normal text. The other provisions, **in bold**, are provisions of the *Income Tax Assessment Act 1936*.

### **dividends or shares**

pooled development fund company dividend .....	<b>124ZM</b>
pooled development fund company shares, income from sale of .....	<b>124ZN</b>

### **financial transactions**

infrastructure borrowings, income in relation to .....	<b>159GZZZZE</b>
pooled development fund company dividends.....	<b>124ZM</b>
pooled development fund company shares, income from sale of .....	<b>124ZN</b>

### **foreign aspects of income taxation**

attributed foreign investment fund income .....	<b>23AK</b>
attributed income .....	<b>23AI</b>
Australian-American Education Foundation, grant from ...	<b>23(za)</b>
withholding tax, income subject to .....	<b>128D</b>

### **non-cash benefits**

business benefit .....	<b>23L(2)</b>
fringe benefit .....	<b>23L(1)</b>

---

\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Section 11-15

---

**11-15 Ordinary or statutory income which is exempt only if it is derived by certain entities**

Provisions of the *Income Tax Assessment Act 1997* are identified in normal text. The other provisions, **in bold**, are provisions of the *Income Tax Assessment Act 1936*.

**defence**

Defence Force member, allowances .....	<b>23(t)</b>
Emergency Defence Force member, pay and allowances ..	<b>23(sa)</b>
Reserve Defence Force member, pay and allowances .....	<b>23(s)</b>

**education**

bursary, educational allowance etc. ....	<b>23(z)</b>
CRAFT scheme, employer's income from .....	<b>23(jc)</b>
foreign student, scholarship and bursary to .....	<b>23(ya)</b>
full time student, income from a scholarship, bursary, other educational allowance or educational assistance .....	<b>23(z)</b>
isolated child, income for the provision of education of ....	<b>23(zaa)</b>
secondary student, income for the provision of education of .....	<b>23(zaa)</b>

**foreign aspects of income taxation**

approved overseas project, income from .....	<b>23AF</b>
Australian Federal Police member in Cambodia, pay and allowance .....	<b>23ADA</b>
Commonwealth Government Officer, official salary and foreign income .....	<b>23(a)(vi)</b>
Commonwealth sporting club or association, income of ...	<b>23(c)(ii)</b>
consul and official staff member, official salary and foreign income .....	<b>23(a)(ii)</b>
Defence Force member, pay and allowances from being on eligible duty .....	<b>23AD</b>

---

\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Section 11-15

Defence Force member, non-resident, pay and allowances of .....	<b>23(u)</b>
Defence Force member, pay and allowances from performing duties in operational areas .....	<b>23AC</b>
defence of Australia, overseas person's income from assisting in Australia's defence .....	<b>23(v)</b>
diplomat and official staff member, official salary and foreign income .....	<b>23(a)(ii)</b>
dividend from a foreign country, non-portfolio .....	<b>23AJ</b>
educational, scientific, religious or philanthropic society, income of a visiting representative of .....	<b>23(c)(iv)</b>
expert, non-resident, remuneration of .....	<b>23(b)</b>
foreign branch profits by an Australian company .....	<b>23AH</b>
foreign society or association representative, income of ...	<b>23(c)(iv)</b>
government representative and members of the entourage, non-resident, income of .....	<b>23(c)(iii)</b>
persecution victim, pensions etc. ....	<b>23(kc)</b>
non-resident, foreign sourced income .....	<b>23(r)</b>
OBU off-shore investment trusts, income to which subsection <b>121D(6)</b> applies .....	<b>121EL</b>
overseas employment income, resident, income of .....	<b>23AG</b>
Papua New Guinea pension, Papua New Guinea resident .....	<b>23(kd)</b>
press representative, foreign, income of .....	<b>23(c)(v)</b>
resistance fighter and victim of wartime persecution, pension and etc. of .....	<b>23(kca)</b>
sporting club, British Commonwealth, income of .....	<b>23(c)(ii)</b>
sports person, non-resident, income of .....	<b>23(c)(i)</b>
superannuation fund, non-resident, interest and dividend income of .....	<b>23(jb)</b>
Territory resident, income from sources in a prescribed Territory .....	<b>24G</b>

\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Section 11-15

---

Territory resident company or trust, income from sources outside Australia .....	<b>24F</b>
United Nations, income from service with .....	<b>23AB</b>
United States projects, income from approved overseas projects .....	<b>23AA</b>
<b>health</b>	
Thalidomide Foundation, trustee, income of .....	<b>23(ec)</b>
<b>life assurance</b>	
constitutionally protected fund, income attributable to .....	<b>110CA</b>
constitutionally protected fund, registered organisation, income attributable to .....	<b>116FC</b>
CS/RA, percentage of notional amount .....	<b>110C</b>
CS/RA class of assessable income, registered organisation .....	<b>116FA</b>
CS/RA class of assessable income .....	<b>110B</b>
current pension liabilities, registered organisation .....	<b>116FB</b>
foreign permanent establishment, income attributable to policy issued by .....	<b>112C</b>
life insurance company, grant from the Protection Fund ...	<b>116DG</b>
policies, income in relation to .....	<b>112A</b>
pooled superannuation trust, disposal of units in .....	<b>111B</b>
pooled superannuation trust, registered organisation, disposal of units in .....	<b>116GC</b>
reinsurance recovery and refund of premium, registered organisation, income from .....	<b>116GE</b>
<b>mining</b>	
Aboriginal and Torres Strait Islander, mining payment .....	<b>23AE</b>
distributing body, mining payment .....	<b>23AE</b>
rights to mine, sale of .....	330-60
<b>social security or like payments</b>	
disability services payment .....	<b>24AF</b>
domiciliary nursing care benefit .....	<b>24AG</b>
drought relief, payment for .....	<b>24AIA to 24AIB</b>

---

\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Section 11-15

persecution victim, pension etc. for .....	<b>23(kc)</b>
resistance fighter and victim of wartime persecution, pension and etc. for .....	<b>23(kca)</b>
social security, payment from .....	<b>24AB to 24ABZD</b>
student and youth, assistance payment to .....	<b>24ABZE to 24ABZF</b>
veteran, Australian and United Kingdom, payment to .....	<b>24AH</b>
veteran, payment to .....	<b>24AC to 24ACWA, 24AE</b>
wounds and disability pension .....	<b>24AI</b>
<b>student</b>	
<i>see education</i>	
<b>superannuation or related business</b>	
Approved Deposit Fund, continuously complying fixed interest, income from 25 May 1988 deposits .....	<b>290A</b>
Approved Deposit Fund, income from a grant of financial assistance under Part 23 of the <i>Superannuation Industry</i> <i>(Supervision) Act 1993</i> .....	<b>315C</b>
Approved Deposit Fund, non-reversionary bonuses on policies of life assurance .....	<b>291A</b>
Approved Deposit Fund, pre-1 July 1988 income .....	<b>291</b>
pooled superannuation trust, income from constitutionally protected funds .....	<b>297C</b>
pooled superannuation trust, income from current pension liabilities of complying superannuation funds .....	<b>297B</b>
pooled superannuation trust, non-reversionary bonuses on policies of life assurance .....	<b>297A</b>
pooled superannuation trust, pre-1 July 1988 income .....	<b>297</b>
superannuation fund, income from current pension liabilities .....	<b>283</b>
superannuation fund, income from segregated current pensions assets .....	<b>282B</b>

\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

**Part 1-4** Checklists of what is covered by concepts used in the core provisions  
**Division 11** Lists of classes of exempt income

Section 11-15

---

superannuation fund, non-reversionary bonuses on policies of life assurance .....	<b>282A</b>
superannuation fund, pre-1 July 1988 income .....	<b>282</b>
superannuation fund, regulated, income from a grant of financial assistance under Part 23 of the <i>Superannuation Industry (Supervision) Act 1993</i> .....	<b>315C</b>
<b>United Nations</b>	
Australian Federal Police member in Cambodia, pay and allowance .....	<b>23ADA</b>
United Nations Service, income from .....	<b>23AB</b>
<b>vice regal</b>	
Governor-General, official salary and foreign income .....	<b>23(a)(i)</b>
State Governor, official salary and foreign income .....	<b>23(a)(i)</b>
<b>welfare</b>	
<i>Handicapped Persons Assistance Act 1974</i> , bonus from ...	<b>23(kba)</b>
maintenance payment .....	<b>23(l)</b>
rent subsidy .....	<b>23(ke)</b>
Note:	The following provisions of the <i>Income Tax Assessment Act 1936</i> give rise to <i>notional</i> exempt income and <i>not</i> exempt income. For this reason the provisions do not appear in the lists of kinds of exempt income.  The provisions are: paragraphs 384(1)(b) and 385(1)(b), subsection 402(2) and sections 403 and 404.

---

\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

---

## Division 12—Particular kinds of deductions

### 12-5 List of provisions about deductions

The provisions set out in the table contain rules about specific types of deduction.

Provisions of the *Income Tax Assessment Act 1997* are identified in normal text. The other provisions, **in bold**, are provisions of the *Income Tax Assessment Act 1936*.

<b>accrued leave transfer payments</b>	
.....	<b>51(3)</b>
<b>advance expenditure</b>	
generally .....	<b>82KZL to 82KZO</b>
avoidance arrangements .....	<b>82KJ</b>
when deductible .....	<b>82KZM</b>
<b>associated persons</b>	
associated persons and relatives, amounts paid to, reduction of deduction .....	<b>65(1) to 65(1F)</b>
family members, expenses incurred in maintaining, no deduction for .....	<b>65(2)</b>
<b>averaging of incomes</b>	
generally .....	<b>149 to 158A</b>
excess of allowable deductions .....	<b>154</b>
<b>bad debts</b>	
general .....	<b>63, 63F</b>
companies .....	<b>63A to 63CA</b>
debt/equity swaps .....	<b>63E, 63F</b>

\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Section 12-5

---

money lenders, listed country branches, no deduction for .....	<b>63D</b>
see also <i>losses</i>	
<b>banks</b>	
Commonwealth Savings Bank of Australia .....	<b>160ABB</b>
foreign banks, Australian branches of .....	<b>160ZZVA to 160ZZZJ</b>
<b>boats</b>	
no deduction for .....	<b>51AB</b>
see also <i>depreciation</i>	
<b>borrowing expenses</b>	
.....	<b>67</b>
<b>buildings</b>	
capital allowances .....	Division 40
income producing buildings, capital allowances .....	Division 43
see also <i>heritage conservation work</i>	
<b>capital allowances</b>	
.....	Division 40
see also <i>depreciation and development allowance</i>	
<b>capital gains</b>	
no deduction for an amount that would otherwise be deductible only because a net capital gain is included in assessable income .....	<b>51AAA</b>
<b>capital loss</b>	
net capital loss, no deduction for .....	<b>160ZO</b>
net capital loss, transfer within company group .....	<b>160ZP</b>
<b>car disposal</b>	
see <i>depreciation</i>	

---

\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Section 12-5

**car expenses**

generally .....	Division 28
“cents per kilometre” method .....	Subdivision 28-C
“log book” method .....	Subdivisions 28-F and 28-G
“one-third of actual expenses” method .....	Subdivision 28-E
substantiation of car expenses .....	Division 900
“12% of original value” method .....	Subdivision 28-D

**car expenses of employee**

employee’s car expenses where car provided by employer can be used for private purposes, no deduction for .....	<b>51AF</b>
-----------------------------------------------------------------------------------------------------------------	-------------

**car parking**

employee’s car parking expenses, no deduction for .....	<b>51AGA</b>
self-employed persons, partnerships and trusts car parking expenses, no deduction for .....	<b>51AGB</b>
self-employed persons, partnerships and trusts car parking expenses, reduced deduction approved using allowed method .....	<b>89A to 89JC</b>

**children’s income**

generally .....	<b>102AA to 102AJ</b>
taxable income of a child, deductions taken into consideration in calculating .....	<b>102AD</b>

**club fees**

club fees, no deduction for .....	<b>51AB</b>
see also <i>subscriptions to associations</i>	

**companies, co-operative and mutual**

generally .....	<b>117 to 121</b>
-----------------	-------------------

---

\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Section 12-5

---

distributions of assessable income .....	<b>120</b>
<b>companies, private</b>	
excessive payments to shareholders directors and associates, reduced deduction .....	<b>109</b>
<b>composite incomes</b>	
more than one class of income, order in which deductions must be claimed if entity in receipt of .....	<b>50</b>
<b>controlled foreign companies</b>	
generally .....	<b>316 to 468</b>
bad debts .....	<b>399A</b>
depreciation .....	<b>398</b>
finance share dividends .....	<b>394</b>
taxes paid .....	<b>393</b>
<b>convertible notes</b>	
<i>see interest</i>	
<b>copyrights</b>	
expenditure in obtaining registration .....	<b>68A</b>
<b>currency exchange gains and losses</b>	
<i>see foreign exchange</i>	
<b>depreciation</b>	
generally .....	<b>54 to 62AAV</b>
calculation of depreciation .....	<b>56</b>
car disposal, balancing adjustment under section <b>59</b> may be reduced by Commissioner .....	<b>59AAA</b>
deduction for .....	<b>54</b>
disposal, loss or destruction of depreciated property, balancing adjustment .....	<b>59</b>
iron and steel production, special depreciation .....	<b>57AK</b>
motor vehicle, limit on cost price .....	<b>57AF</b>
partial use of property, only partial deduction .....	<b>61</b>
roll-over relief, unpooled property .....	<b>58</b>

---

\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Section 12-5

---

trading ships, special depreciation ..... **57AM**

---

\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

---

Section 12-5

---

<b>designs</b>	
expenditure in obtaining or extending registration .....	<b>68A</b>
<b>development allowance</b>	
generally .....	<b>82AAAA to 82AQ</b>
disposal of property after 12 months. ....	<b>82AH</b>
leased property, limit on deduction for .....	<b>26-55</b>
lessor may transfer benefit of deduction to lessee . ....	<b>82AD</b>
new property, capital expenditure incurred after 26 February 1992, additional deduction .....	<b>82AB, 82AM</b>
<b>disposal of depreciated property</b>	
<i>see depreciation</i>	
<b>dividends</b>	
debt dividends .....	<b>67AA</b>
franking credits, companies and non-residents .....	<b>160AR, 160ARD</b>
franking credits, pooled development funds (PDFs) .....	<b>124ZM</b>
<b>drought investment allowance</b>	
<i>see primary production</i>	
<b>education expenses</b>	
Higher Education Contribution Scheme, no deduction unless provided as fringe benefit .....	<b>51(6), 51(6A)</b>
limit on deduction .....	<b>82A</b>
<b>election expenses</b>	
Federal and State Parliament election expenses .....	<b>74, 74B</b>
local government election expenses, limited deduction for.....	<b>74A, 74B</b>
<b>electricity connections</b>	
capital cost of .....	<b>70A</b>

---

\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Section 12-5

<b>embezzlement</b>	
embezzlement, defalcation, larceny, misappropriation, losses caused by .....	<b>71</b>
<b>employees</b>	
pensions, gratuities or retiring allowances for ex-employees .....	<b>78</b>
see also <i>shares</i>	
<b>entertainment</b>	
expenditure, no deduction for some .....	<b>51AE</b>
meal entertainment, calculation of deductible amount .....	<b>51AEA to 51AEC</b>
<b>environment</b>	
environmental impact studies .....	<b>82B to 82BG</b>
environment protection expenditure .....	<b>82BH to 82BR</b>
<b>exploration and prospecting</b>	
.....	Subdivision 330-A
<b>film income</b>	
Australian films .....	<b>124ZAA to 124ZAP</b>
exempt film income .....	<b>23H</b>
see also <i>losses</i>	
<b>financial arrangements</b>	
see <i>borrowing expenses, infrastructure borrowings,         interest, leases and securities</i>	
<b>foreign exchange</b>	
losses .....	<b>82U to 82ZB</b>
<b>foreign income</b>	
limit on deduction .....	<b>79D</b>

---

\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

## Section 12-5

---

<b>foreign investment funds (FIFs)</b>	
generally .....	<b>469 to 624</b>
loss under cash surrender values method .....	<b>533</b>
loss under market value method .....	<b>532</b>
notional deductions .....	<b>567 to 574</b>
<b>foreign life assurance policies</b>	
<i>see foreign investment funds</i>	
<b>foreign tax credits</b>	
generally .....	<b>160AE to 160AFF</b>
Australian branch of a foreign bank, foreign tax paid on interest received by the branch from a place outside Australia .....	<b>160ZZY</b>
<b>freight</b>	
freight for shipped goods .....	<b>135A</b>
<b>fringe benefits</b>	
contributions for private component, no deduction for .....	<b>51AJ</b>
employee's car expenses where car provided by employer can be used for private purposes, no deduction for .....	<b>51AF</b>
employee's car parking expenses, no deduction for .....	<b>51AGA</b>
expense payment fringe benefits, reduced deduction .....	<b>51AH</b>
<b>gifts</b>	
general .....	<b>78</b>
cultural organisations, eligibility criteria .....	<b>78AA</b>
environmental organisations, eligibility criteria .....	<b>78AB</b>
limit on deduction .....	<b>26-55</b>
<i>see also tax avoidance schemes</i>	
<b>grape vines</b>	
<i>see primary production</i>	
<b>horticultural plants</b>	
<i>see primary production</i>	
<b>heritage conservation work</b>	

---

\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Section 12-5

generally .....	<b>159U to 159UY</b>
rebate, no deduction if entitled to a .....	<b>159UU</b>
<b>Higher Education Contribution Scheme (HECS)</b>	
no deduction for unless fringe benefit .....	<b>51(6), 51(6A)</b>
<b>income equalisation deposits</b>	
see <i>primary production</i>	
<b>industrial property</b>	
generally .....	<b>124K to 124Z</b>
deduction for .....	<b>124M</b>
disposal or lapse of a unit of industrial property	<b>124N, 124PA, 124Q</b>
copyright design and patents, expenditure in obtaining grant or registration .....	<b>68A</b>
<b>infrastructure borrowings</b>	
generally .....	<b>159GZZZZ D to 159GZZZZ H</b>
no deduction for .....	<b>159GZZZZ E</b>
<b>insurance and annuity business</b>	
generally .....	<b>116E to 116J</b>
assets, notional Part IIIA disposal of .....	<b>116GA</b>
benefits or reinsurance premiums, no deduction for .....	<b>116HAD</b>
deductions for .....	<b>116H</b>
investment component, cost of obtaining .....	<b>116HAC</b>
superannuation premiums, expenditure incurred in obtaining .....	<b>116HAB</b>

\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Section 12-5

---

<b>insurance with non-residents</b>	
generally .....	<b>141 to 148</b>
insurance premiums, no deduction unless arrangement to pay tax .....	<b>145</b>
reinsurance, no deduction for resident carrying on insurance business in Australia for reinsurance premiums paid to a non-resident .....	<b>148</b>
<b>interest</b>	
convertible notes, interest on, generally .....	<b>82L to 82T</b>
interest for underpayment or late payment of tax .....	<b>51(5)</b>
interest, no deduction for interest paid by a non-resident until the withholding tax payable has been paid .....	<b>221YRA(1)</b>
life assurance premiums, interest etc. on loans to finance, no deduction for .....	<b>67AAA</b>
non-residents, debt creation involving, generally .....	<b>159GZY to 159GZZF</b>
superannuation contributions, interest etc. on loans to finance, no deduction for .....	<b>67AAA</b>
thin capitalisation by non-residents, generally .....	<b>159GZA to 159GZX</b>
see also <i>infrastructure borrowings</i>	
<b>international agreements</b>	
see <i>transfer pricing</i>	
<b>international profit shifting</b>	
see <i>transfer pricing</i>	
<b>investment company</b>	
see <i>shares</i>	
<b>iron and steel production</b>	
special depreciation for property used in basic iron and steel production .....	<b>57AK</b>
<b>land degradation</b>	
see <i>primary production</i>	
<b>larceny</b>	

---

\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Section 12-5

---

see *embezzlement*

**lease document expenses**

..... **68**

---

\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

---

## Section 12-5

---

### leases

finance leases and arrangements, use of property if  
end-user an exempt public body or use outside  
Australia to produce exempt income ..... **159GE to  
159GO**

improvements on leased land and premiums, leases  
assigned or surrendered before 23 October 1964 and for  
mining leases assigned or surrendered before 10 May  
1968 ..... **83 to 89,  
88A(3)**

leveraged arrangements, property used:

- other than to produce assessable income; or
- by a non-resident outside Australia; or
- by a previous owner

..... **51AD**

### leave payments

accrued leave transfer payments ..... **51(3)**

no deduction for leave payments until paid ..... **51(3)**

### legal expenses

capital legal expenses, limited deduction for ..... **64A**

### leisure facilities

no deduction for ..... **51AB**

### life assurance companies

..... **110 to  
116DK**

### loans

see *borrowing expenses, interest and securities*

---

\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Section 12-5

<b>losses</b>	
foreign exchange .....	<b>82U to 82ZB</b>
profit-making undertaking or scheme .....	<b>52</b>
property sale .....	<b>52</b>
traditional securities, loss on disposal or redemption of ....	<b>70B</b>
see also <i>tax losses</i>	
<b>management and investment company shares</b>	
see <i>shares</i>	
<b>membership of associations</b>	
see <i>subscriptions to associations</i>	
<b>mining</b>	
generally .....	Division 330
gold mining .....	<b>159GZZG to 159GZZZB I</b>
uranium mining .....	<b>23D</b>
<b>mortgage</b>	
expenses of discharging a mortgage .....	<b>67A</b>
<b>motor vehicles</b>	
see <i>car expenses and leases</i>	
<b>non-cash transactions</b>	
non-cash business benefits .....	<b>51AK</b>
non-cash consideration, money value deemed to have been paid or given . ....	<b>21</b>
<b>non-resident trust estates</b>	
generally .....	<b>102AAA to 102AAZG</b>
modified application of depreciation provisions .....	<b>102AAZ</b>
modified application of trading stock provisions .....	<b>102AAZ</b>

\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Section 12-5

---

no deductions allowable under section **79E**, **79F**, **80**,  
**80AAA** or **80AA** ..... **102AAZC**

---

\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

---

Section 12-5

<b>offshore banking units</b>	
generally .....	<b>121A to 121EL</b>
deductions for .....	<b>121EG</b>
foreign tax deduction .....	<b>121EI</b>
<b>partnerships</b>	
losses, partner's share of partnership loss .....	<b>90, 92</b>
<b>patents</b>	
expenditure relating to grant of patents, etc. ....	<b>68A</b>
<b>penalties</b>	
no deduction for penalties .....	<b>51(4)</b>
<b>petroleum prospecting and mining</b>	
generally .....	Division 330
petroleum resource rent tax payments .....	Subdivision 330-G
<b>plant and articles</b>	
<i>see capital allowances and depreciation</i>	
<b>pooled development funds (PDFs)</b>	
.....	<b>124ZM to 124ZZD</b>
<b>prepaid expenditure</b>	
<i>see advance expenditure</i>	
<b>primary production</b>	
drought investment allowance, generally .....	<b>625 to 684</b>
grape vines, expenditure incurred in establishing .....	<b>75AA</b>
horticultural plants, establishment costs of .....	<b>124ZZD to 124ZZR</b>
income equalisation deposits .....	<b>159GA to 159GDA</b>
land, preparing clearing ploughing or draining land for use in primary production and other activities .....	<b>75A</b>
land degradation, expenses incurred in preventing .....	<b>75D</b>

---

\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

## Section 12-5

---

telephone lines, cost of extending .....	<b>70</b>
water, expenditure on conserving or conveying .....	<b>75B</b>
see also <i>electricity connections</i>	
<b>promoters recoupment tax</b>	
general .....	<b>78B</b>
limit on deduction .....	26-55
<b>property</b>	
arrangements relating to use of property if end-user an exempt public body or use outside Australia to produce exempt income .....	<b>159GE to 159GO</b>
leveraged arrangements, property used:	
• other than to produce assessable income; or	
• by a non-resident outside Australia; or	
• by a previous owner	
.....	<b>51AD</b>
sale of property, profit or loss .....	<b>82(2)</b>
see also <i>capital allowances, depreciation and losses</i>	
<b>public trading trusts</b>	
generally .....	<b>102M to 102T</b>
debt dividends, application of section <b>67AA</b> .....	<b>102T(4A)</b>
<b>qualifying securities</b>	
see <i>securities</i>	
<b>quarrying</b>	
.....	Division 330
<b>regional headquarters (RHQs)</b>	
.....	<b>82C to 82CE</b>
<b>reimbursements</b>	
expense payment fringe benefits, reduced deduction .....	<b>51AH</b>

---

\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Section 12-5

<b>reinsurance</b>	
<i>see insurance with non-residents</i>	
<b>relatives, payments to</b>	
<i>see associated persons</i>	
<b>repairs</b>	
general .....	<b>53</b>
repair covenants, payment for non-compliance with covenant to repair under lease .....	<b>53AA</b>
<b>research &amp; development</b>	
generally .....	<b>73B to 73G</b>
scientific research .....	<b>73A</b>
<b>roads</b>	
<i>see timber</i>	
<b>royalties</b>	
royalty paid where tax instalment deductions have not been made by the payer, no deduction for .....	<b>221YRA</b>
<b>scientific research</b>	
<i>see research &amp; development</i>	
<b>securities</b>	
qualifying securities .....	<b>159GP to 159GZ</b>
substituted securities .....	<b>23K</b>
traditional securities, loss on disposal or redemption of ....	<b>70B</b>
<b>shares</b>	
buy-backs .....	<b>159GZZZJ to 159GZZZT</b>
cancellation of subsidiary's shares in holding company ....	<b>159GZZZC to 159GZZZI</b>
employee share acquisition schemes, deduction for provider of qualifying shares or rights .....	<b>139DC</b>
<i>see also dividends and securities</i>	

---

\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Section 12-5

---

<b>State Bank of NSW</b>	
no deduction under section 82AAC .....	<b>121EP</b>
<b>State or Territory bodies (STBs)</b>	
body ceasing to be STB, some deductions not allowed .....	<b>24AW to 24AYA</b>
<b>subscriptions to associations</b>	
.....	<b>73</b>
<b>substantiation</b>	
work, travel and car expenses .....	Division 900
<b>successive deductions</b>	
setting off deductions where more than one class of income .....	<b>49</b>
<b>superannuation</b>	
see <i>insurance and annuity business and interest</i>	
<b>superannuation and related business</b>	
generally .....	<b>267 to 315F</b>
asset disposals .....	<b>304</b>
death or disability benefits, deduction for future service element .....	<b>279B</b>
death or disability cover, premiums for .....	<b>279</b>
detriment payments .....	<b>279D</b>
financial assistance levy .....	<b>315B, 315F</b>
<b>superannuation—eligible person contributions</b>	
general .....	<b>82AAS to 82AAT</b>
limit on deduction .....	<b>26-55</b>

---

\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Section 12-5

<b>superannuation—employer contributions</b>	
generally .....	<b>82AAA to 82AAR</b>
contributions to eligible superannuation fund for employees .....	<b>82AAC</b>
contributions to non-complying funds .....	<b>82AAD, 82AAE</b>
deposits under the <i>Small Superannuation Accounts Act 1995</i> .....	<b>82AAF</b>
no deduction for under any other provision of the Act .....	<b>82AAR</b>
<b>superannuation guarantee charge</b>	
no deduction for .....	<b>51(9)</b>
<b>superannuation levy</b>	
late lodgment amount, no deduction for .....	<b>51(8)</b>
<b>tax agent's fees</b>	
see <i>tax related expenses</i>	
<b>tax avoidance schemes</b>	
companies, use of tax losses or deductions to avoid tax ....	Division 175
diverted assessable income .....	<b>121F to 121L</b>
dividend stripping .....	<b>46A, 177E</b>
gifts .....	<b>78A</b>
international profit shifting, transfer pricing .....	<b>136AA to 136AG</b>
prepaid outgoings to avoid tax .....	<b>82KJ</b>
recouped expenditure .....	<b>82KH to 82KL</b>
tax avoidance scheme, no deduction allowable where deduction the result of. ....	<b>177A to 177G</b>
trading stock .....	<b>31C, 52A</b>

\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Section 12-5

---

<b>tax file number (TFN) withholding tax</b>	
investor, no deduction for .....	<b>221YHZZA</b>
<b>tax losses</b>	
bad debts, companies .....	<b>63CA</b>
change of ownership or control of a company	
generally .....	Division 165
for earlier income years .....	Subdivision 165-A
for income year of the change .....	Subdivision 165-B
earlier income years .....	Division 36
film losses .....	Subdivision 375-G
pooled development funds .....	Subdivision 195-A
transfer between companies in same wholly-owned group .....	Subdivision 170-A
<b>tax related expenses</b>	
.....	<b>69</b>
<b>telephone lines</b>	
see <i>primary production</i>	
<b>timber</b>	
access roads for timber operations, expenditure on .....	<b>124F</b>
land attributable to felled timber, part of purchase price ...	<b>124J</b>
mill buildings, expenditure on .....	<b>124JA to 124JD</b>
<b>trading ships</b>	
see <i>depreciation</i>	
<b>trading stock</b>	
Commissioner may determine whether consideration paid for chose in action is reasonable .....	<b>52A</b>

---

\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Section 12-5

excess of opening stock over closing value .....	<b>28(3)</b>
expenditure deemed not to be of a capital nature .....	<b>51(2)</b>
prepayments, when stock becomes trading stock on hand .....	<b>51(2A)</b>
see also <i>tax avoidance schemes</i>	
<b>traditional securities</b>	
see <i>securities</i>	
<b>training guarantee</b>	
training guarantee charge, no deduction for .....	<b>51(7)</b>
<b>transfer pricing</b>	
generally .....	<b>136AA to 136AG</b>
adjustments to deductions .....	<b>136AF</b>
<b>travel expenses</b>	
accompanying relatives, no deduction for some travel expenses .....	<b>51AG</b>
see also <i>substantiation</i>	
<b>trusts</b>	
trust income, deductions considered in calculating .....	<b>95 to 102</b>
unit trusts .....	<b>102D to 102L</b>
see also <i>non-resident trust estates</i> and <i>public trading trusts</i>	
<b>uniforms</b>	
non-compulsory uniforms .....	<b>51AL</b>
<b>uranium mining</b>	
see <i>mining</i>	
<b>water</b>	
see <i>primary production</i>	
<b>work expenses</b>	
see <i>substantiation</i>	

---

\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Section 13-1

---

**Division 13—Tax offsets**

**13-1 List of tax offsets**

The provisions set out in the list allow you a \*tax offset.

Provisions of the *Income Tax Assessment Act 1997* are identified in normal text. The other provisions, **in bold**, are provisions of the *Income Tax Assessment Act 1936*.

**Aboriginal study assistance**

see *social security and other benefit payments*

**annual leave**

see *leave payments*

**annuity**

see *eligible termination payments*

**approved deposit funds (ADFs)**

see *dividends*

**averaging**

see *primary production*

**bonuses**

see *life assurance*

**child**

hardship ..... **102AJ**

increased tax payable under Part III Division 6AA,  
unreasonable ..... **102AH**

trust income ..... **100(2)**

**child/housekeeper**

see *dependants*

**Commonwealth Savings Bank**

payments by ..... **160ABB**

---

\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Section 13-1

**corporate unit trusts**

*see dividends*

**defence force**

members serving overseas ..... **79B**

**dependants**

child of person keeping house for the person ..... **159J**

housekeeper, caring for child, invalid relative or disabled  
spouse ..... **159L**

invalid relative ..... **159J**

parents/parents in law ..... **159J**

sole parent ..... **159K**

spouse ..... **159J**

*see also medical expenses*

**dividends**

franked, received by:

general ..... **160AQU**

beneficiaries of a trust ..... **160AQX**

company through a partnership or trust ..... **160APQ**

life assurance companies ..... **160AQZA**

partners ..... **160AQZ**

superannuation funds, approved deposit funds (ADFs) and  
pooled superannuation trusts (PSTs) ..... **160AQYA**

trustees ..... **160AQY**

received by:

company as shareholder ..... **46(2)**

company as shareholder, part of dividend stripping  
operation ..... **46A**

company through a partnership or trust ..... **45Z**

corporate unit trusts ..... **102L**

public trading trust ..... **102T**

\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Section 13-1

---

**drought relief**

*see social security and other benefit payments*

**eligible termination payments (ETPs)**

eligible termination payment annuity, rebatable ..... **159SU**

superannuation contributions ..... **159SZ**

superannuation pension, rebatable ..... **159SM**

termination payments ..... **159SA**

*see also leave payments*

**films**

*see foreign tax*

**foreign tax**

film income, credit for overseas tax paid ..... **160AGA(3)**

foreign income, credit for overseas tax paid ..... **160AF**

shipping income, credit for overseas tax paid ..... **160AGB(3)**

**franked dividends**

*see dividends*

**hardship**

*see child*

**heritage conservation**

..... **159UQ to  
159UT**

**housekeeper**

*see dependants*

**imputation**

*see dividends*

**inter-corporate dividends**

*see dividends*

**interest**

tax paid on by company ..... **127**

**invalid relative**

*see dependants*

**leave payments**

---

\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Section 13-1

annual leave, unused .....	<b>159SA</b>
long service leave, unused .....	<b>159SA</b>
<b>legal disability</b>	
<i>see trusts</i>	
<b>life assurance</b>	
bonus, receipt of .....	<b>160AAB</b>
<b>loan interest</b>	
securities issued before 1 November 1968, received on .....	<b>160AB</b>
<b>long service leave</b>	
<i>see leave payments</i>	
<b>low income earner</b>	
.....	<b>159N</b>
<b>lump sum income arrears</b>	
receipt of .....	<b>159ZRA,</b> <b>159ZRB</b>
<b>medical expenses</b>	
payment of .....	<b>159P</b>
<b>non-resident beneficiary</b>	
<i>see trusts</i>	
<b>non-resident trust estate</b>	
<i>see trusts</i>	
<b>overseas defence force service</b>	
<i>see defence force</i>	
<b>overseas tax</b>	
<i>see foreign tax</i>	
<b>parent/parent-in-law</b>	
<i>see dependants</i>	
<b>partnerships</b>	
<i>see dividends</i>	

---

\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Section 13-1

---

<b>pension</b>	
<i>see social security and other benefit payments</i>	
<b>pooled superannuation trusts (PSTs)</b>	
<i>see dividends</i>	
<b>primary production</b>	
averaging of income .....	<b>156</b>
drought relief payments <i>see social security and other benefit payments</i>	
<b>public trading trust</b>	
<i>see dividends</i>	
<b>public unit trust</b>	
<i>see dividends</i>	
<b>rebatable ETP annuity</b>	
<i>see eligible termination payments</i>	
<b>residents of isolated areas</b>	
<i>see zone</i>	
<b>shipping income</b>	
<i>see foreign tax</i>	
<b>sickness benefits</b>	
<i>see social security and other benefit payments</i>	
<b>social security and other benefit payments</b>	
Aboriginal study assistance scheme .....	<b>160AAA(3)</b>
children, assistance for isolated .....	<b>160AAA(3)</b>
drought relief, farm household support .....	<b>160AAA(3)</b>
pension, social security pension and veteran's pension .....	<b>160AAA(2)</b>
textile, clothing and footwear allowance .....	<b>160AAA(3)</b>
unemployment, sickness and other benefit payments under the <i>Social Security Act 1991</i> .....	<b>160AAA(3)</b>
<b>sole parent</b>	
<i>see dependants</i>	

---

\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

---

Section 13-1

---

<b>spouse</b>	
<i>see dependants</i>	
<b>superannuation</b>	
<i>see eligible termination payments</i>	
<b>superannuation funds</b>	
<i>see dividends</i>	
<b>tax credit</b>	
<i>see foreign tax</i>	
<b>termination payments</b>	
<i>see eligible termination payments</i>	
<b>trustee</b>	
<i>see dividends and trusts</i>	
<b>trusts</b>	
non-resident beneficiary .....	<b>98A(2)</b>
non-resident trust estate, winding-up .....	<b>102AAN</b>
trust income of beneficiary with legal disability .....	<b>100(2)</b>
<i>see also dividends</i>	
<b>United Nations forces</b>	
salary, wages and allowances from service as a member of .....	<b>23AB(7)</b>
<b>unemployment benefits</b>	
<i>see social security and other benefit payments</i>	
<b>unit trusts</b>	
<i>see dividends</i>	
<b>winding-up of non-resident trust estates</b>	
<i>see trusts</i>	
<b>zone</b>	
residents of isolated areas .....	<b>79A</b>

*[The next heading is the heading to Chapter 2.]*

---

\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

## **Chapter 2—Liability rules of general application**

*[The next heading is the heading to Part 2-5.]*

### **Part 2-5—Rules about deductibility of particular kinds of amounts**

*[The next Division is Division 26.]*

#### **Division 26—Some amounts you cannot deduct, or cannot deduct in full**

*[The next section is section 26-55.]*

##### **26-55 Limit on deductions**

- (1) There is a limit on the total of the amounts you can deduct for the income year under these provisions of the *Income Tax Assessment Act 1936*:
  - (a) section 78 (Deductions for gifts, pensions etc.);
  - (b) section 78B (Promoters recoupment tax);
  - (c) Subdivision B (Development allowance) of Division 3 of Part III, so far as it provides for deductions by a \*leasing company;
  - (d) section 82AAT (Deductions for superannuation contributions by eligible persons);
  - (e) Division 3 of Part XII (Drought investment allowance), so far as it provides for deductions by a \*leasing company.

---

\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

---

Section 26-55

---

Do not include in the total an amount that you could also deduct under another provision of this Act, apart from section 8-10 (which prevents double deductions).

- (2) The limit is worked out by subtracting from your assessable income all your deductions except:
- (a) \*tax losses; and  
See Division 36 (which is about tax losses of earlier income years).
  - (b) amounts you can deduct under:
    - Subdivision 330-A (Exploration and prospecting); or
    - Subdivision 330-C (Development and operation of a mine or quarry); and
  - (c) amounts you have deposited in terms of Division 16C (Income equalisation deposits) of Part III of the *Income Tax Assessment Act 1936*.

*[The next Division is Division 28.]*

---

\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

---

Section 28-1

---

## **Division 28—Car expenses**

### **Table of Subdivisions**

	Guide to Division 28
28-A	Deductions for car expenses
28-B	Choosing which method to use
28-C	The “cents per kilometre” method
28-D	The “12% of original value” method
28-E	The “one-third of actual expenses” method
28-F	The “log book” method
28-G	Keeping a log book
28-H	Odometer records for a period
28-I	Retaining the log book and odometer records
28-J	Situations where you cannot use, or don’t need to use, one of the 4 methods

### **Guide to Division 28**

#### **28-1 What this Division is about**

This Division sets out the rules for working out deductions for car expenses if you own or lease a car or hire a car under a hire purchase agreement.

### **Table of sections**

28-5	Map of this Division
------	----------------------

---

\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

---

## Section 28-5

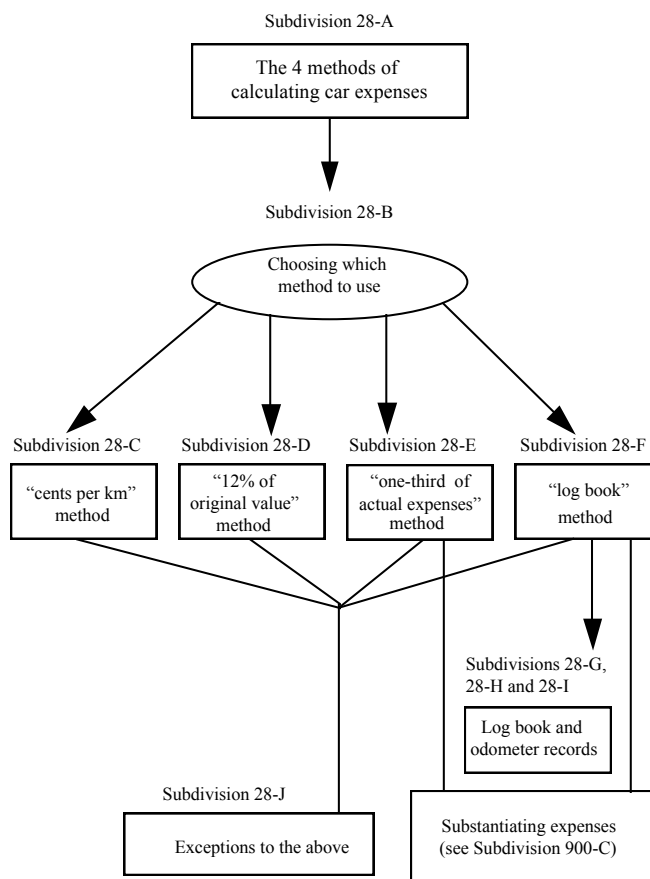
### 28-5 Map of this Division

*Section 28-12 contains the basic operative provision.*

*Choosing the best method is up to you. Hence it is important to understand the methods and how they differ.*

*The "log book" method is more complicated because it involves further Subdivisions about log books and odometer records.*

*The exceptions cover unusual cases which will not apply to most taxpayers.*



\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Section 28-10

---

**Subdivision 28-A—Deductions for car expenses**

**Table of sections**

28-10	Application of Division 28
28-12	Car expenses
28-13	Meaning of <i>car expense</i>

**28-10 Application of Division 28**

- (1) This Division applies to an individual.
- (2) It also applies to a partnership that includes at least one individual, as if the partnership were an individual.
- (3) It does not apply to any other entity.

**28-12 Car expenses**

- (1) If you owned or leased a \*car or hired a \*car under a hire purchase agreement, you can deduct for the car's expenses an amount or amounts worked out using one of 4 methods.

Note: For particular types of cars taken on hire you cannot use one of the 4 methods: see section 28-165.

- (2) You must use one of the 4 methods unless an exception applies. If you can't use any of the methods, you can't deduct anything for the \*car expenses.

**28-13 Meaning of *car expense***

- (1) A *car expense* is a loss or outgoing to do with a \*car.
- (2) In addition, any of the following is a car expense:
  - (a) a loss or outgoing to do with operating a \*car;
  - (b) depreciation of a \*car.

---

\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

---

- (3) None of the following is a car expense:
- (a) a loss or outgoing incurred, or a payment made, in respect of travel outside Australia;
  - (b) a taxi fare or similar loss or outgoing.

## **Subdivision 28-B—Choosing which method to use**

### **Guide to Subdivision 28-B**

#### **28-14 What this Subdivision is about**

This Subdivision sets out the rules about choosing a method of calculating car expense deductions.

#### **Table of sections**

28-15 Choosing among the 4 methods

##### **Operative provision**

28-20 Rules governing choice of method

#### **28-15 Choosing among the 4 methods**

On the next page is a graphic that gives information about the 4 methods of calculating \*car expense deductions.

The 4 methods give you the choice of which method best suits your situation and needs.

For instance, some methods will involve more paperwork than others, but could give you bigger deductions. There are also eligibility requirements for some methods, so you need to check that you are eligible to use a particular method.

---

\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

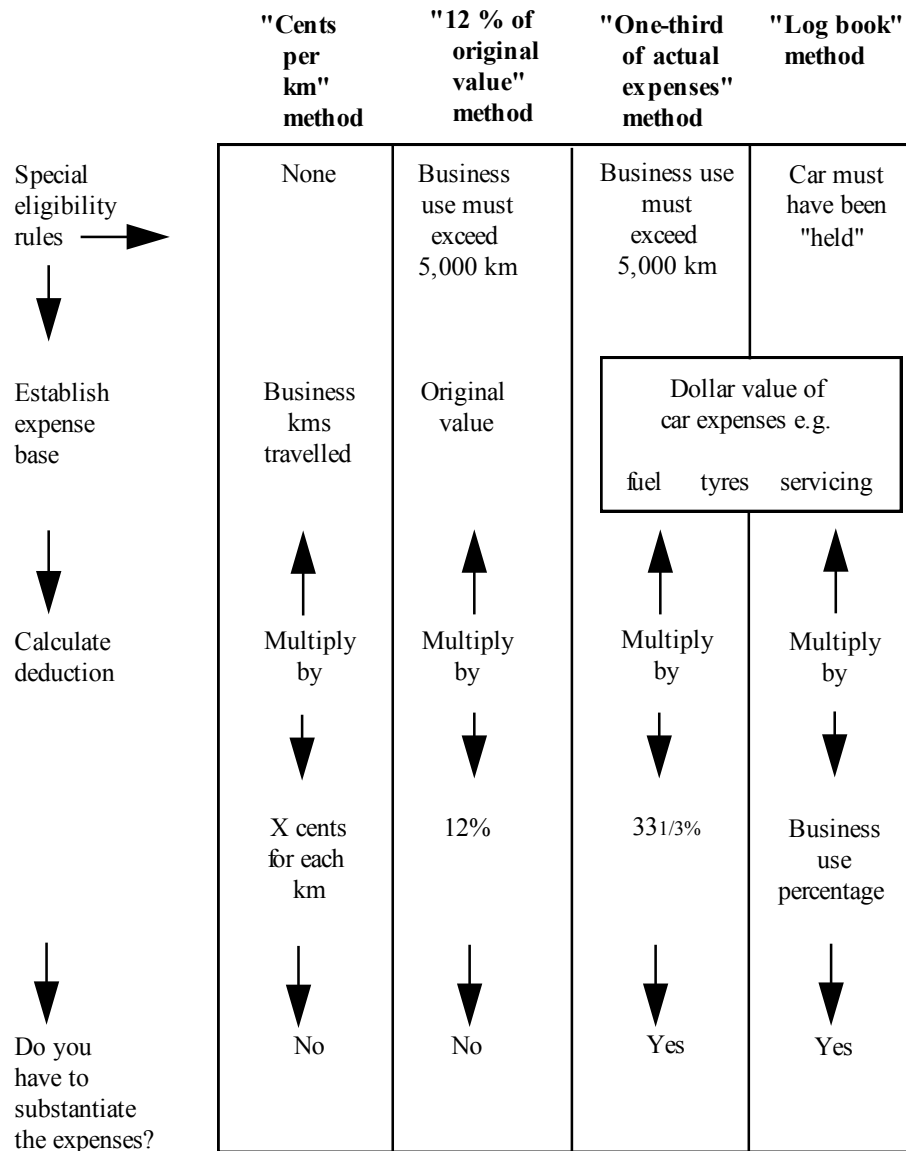
**Part 2-5** Rules about deductibility of particular kinds of amounts

**Division 28** Car expenses

**Subdivision 28-B** Choosing which method to use

Section 28-15

---



---

\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

---

## Operative provision

### 28-20 Rules governing choice of method

- (1) You can choose only one method for all the \*car expenses for the \*car for the income year. Choosing one method precludes any other method.
- (2) However, you can change your choice for the income year.  
Example: You choose the “log book” method and deduct \$1,000. On audit, the Commissioner finds that your claim is too high and should be reduced to \$500. You would have been able to deduct \$700 if you had chosen the “cents per kilometre” method. This rule lets you change your choice and deduct the \$700.
- (3) You can also choose different methods for the same \*car for different income years and different methods for different cars for the same year.

### Subdivision 28-C—The “cents per kilometre” method

#### Table of sections

28-25	How to calculate your deduction
28-30	Depreciation
28-35	Substantiation

### 28-25 How to calculate your deduction

- (1) To calculate your deduction using the “cents per kilometre” method, you multiply:
  - the number of \*business kilometres the \*car travelled in the income year;by:
  - a number of cents based on the car’s engine capacity.

---

\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

**Part 2-5** Rules about deductibility of particular kinds of amounts

**Division 28** Car expenses

**Subdivision 28-D** The “12% of original value” method

Section 28-30

---

The number of cents can be found in the regulations.

- (2) But you can use this formula for the first 5,000 \*business kilometres only. If the \*car travelled more than 5,000 business kilometres, you must discard the kilometres in excess of 5,000.

Example: If the car travelled 5,085 business kilometres, you could claim for 5,000, and would lose the extra 85.

- (3) **Business kilometres** are kilometres the \*car travelled in the course of producing your assessable income. You calculate the number of business kilometres by making a reasonable estimate.

**28-30 Depreciation**

If you dispose of the \*car, or it is lost or destroyed, you will need to refer to the depreciation rules to find out how using this method affects the operation of those rules. See section 59AAA (Disposal, loss or destruction of car for which certain methods have been used to calculate car expense deductions) of the *Income Tax Assessment Act 1936*.

**28-35 Substantiation**

To use this method, you do *not* need to substantiate the \*car expenses for the \*car.

**Subdivision 28-D—The “12% of original value” method**

**Table of sections**

28-45	How to calculate your deduction
28-50	Eligibility
28-55	Depreciation
28-60	Substantiation

---

\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

---

## 28-45 How to calculate your deduction

- (1) Using the “12% of original value” method, you deduct 12% of the cost of the \*car when you acquired it or hired it under a hire purchase agreement, or 12% of its market value when you first began to lease it.
- (2) But the most you can deduct using this method is 12% of the motor vehicle depreciation limit for the income year when you first used the \*car for any purpose (if you own it or are hiring it) or when you first began to lease it.

Note: Section 57AF of the *Income Tax Assessment Act 1936* deals with motor vehicle depreciation limits.

- (3) Your deduction is reduced if you did not own, lease or hire the \*car for the whole income year. You can only deduct the amount worked out using the formula:

$$\text{full year car deduction} \times \frac{(365 - \text{number of car - less days})}{365}$$

The **full year car deduction** is the amount you could deduct if you had owned, leased or hired the \*car for the whole income year.

A **car-less day** is a day when you did not own, lease or hire the \*car.

## 28-50 Eligibility

- (1) You can use this method only if the number of \*business kilometres travelled by the \*car in the income year was more than 5,000, or would have been if you had used the car throughout the income year.
- (2) **Business kilometres** are kilometres the \*car travelled in the course of producing your assessable income. You calculate the number of business kilometres by making a reasonable estimate.

---

\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Section 28-55

---

**28-55 Depreciation**

If you dispose of the \*car, or it is lost or destroyed, you will need to refer to the depreciation rules to find out how using this method affects the operation of those rules. See section 59AAA (Disposal, loss or destruction of car for which certain methods have been used to calculate car expense deductions) of the *Income Tax Assessment Act 1936*.

**28-60 Substantiation**

To use this method, you do *not* need to substantiate the \*car expenses for the \*car.

**Subdivision 28-E—The “one-third of actual expenses” method**

**Table of sections**

28-70	How to calculate your deduction
28-75	Eligibility
28-80	Substantiation

**28-70 How to calculate your deduction**

- (1) Using the “one-third of actual expenses” method, you deduct one-third of each \*car expense.
- (2) The expense must qualify as a deduction under some provision of this Act outside this Division (or would qualify if, throughout the income year, you had used the \*car only in producing your assessable income). If only part of the expense would qualify, you deduct one-third of that part.

Example: You borrow money to buy a car. You make repayments of principal and payments of interest.

You cannot deduct the repayments of principal because they are capital expenses.

---

\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

## Section 28-75

---

The interest payments would be deductible in full if, throughout the income year, you had used the car only in producing your assessable income. Using the “one third of actual expenses” method, you can deduct one-third of the interest payments.

To find out whether an expense qualifies as a deduction under this Act, see Division 8 (Deductions).

### 28-75 Eligibility

- (1) You can use this method only if the number of \*business kilometres travelled by the \*car in the income year was more than 5,000, or would have been if you had used the car throughout the income year.
- (2) **Business kilometres** are kilometres the \*car travelled in the course of producing your assessable income. You calculate the number of business kilometres by making a reasonable estimate.

### 28-80 Substantiation

To use this method, you must substantiate the expenses under Subdivision 900-C.

## Subdivision 28-F—The “log book” method

### Table of sections

28-90	How to calculate your deduction
28-95	Eligibility
28-100	Substantiation

### 28-90 How to calculate your deduction

- (1) To use the “log book” method, you multiply the amount of each \*car expense by the \*business use percentage.

---

\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Section 28-90

---

*The expense*

- (2) The expense must qualify as a deduction under some provision of this Act outside this Division (or would qualify if, while you \*held the \*car, you had used it only in producing your assessable income). If only part of the expense would qualify, you multiply that part by the \*business use percentage.

Example: You borrow money to buy a car. You make repayments of principal and payments of interest.

You cannot deduct the repayments of principal because they are capital expenses.

The interest payments would be deductible in full if, throughout the income year, you had used the car only in producing your assessable income.

Using the “log book” method:

- if you held the car for the whole income year—multiply the interest payments by the business use percentage;
- if you held the car for only 6 months of the income year—multiply the interest payments for those 6 months by the business use percentage.

To find out whether an expense qualifies as a deduction under this Act, see Division 8 (Deductions).

*The percentage*

- (3) The **business use percentage** is calculated by dividing:

- the number of \*business kilometres that the \*car travelled in the period when you \*held it during the income year;

by

- the total number of kilometres that the car travelled in that period;

and expressing the result as a percentage.

---

\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

- (4) **Business kilometres** are kilometres the \*car travelled in the course of producing your assessable income.
- (5) You calculate the number of business kilometres by making a reasonable estimate. The estimate must take into account all relevant matters, including:
  - (a) any log books, odometer records or other records you have; and
  - (b) any variations in the pattern of use of the \*car; and
  - (c) any changes in the number of cars you used in the course of producing your assessable income.
- (6) You **hold** a \*car while you own it, or it is leased to you, or you are hiring it under a hire purchase agreement, for use in the course of producing your assessable income, even if it is also used for some other purpose.

### **28-95 Eligibility**

You can use this method only if you \*held the \*car for some or all of the income year.

### **28-100 Substantiation**

- (1) To use this method, you must substantiate the \*car expenses under Subdivision 900-C.
- (2) You must also keep a log book. Subdivision 28-G explains:
  - how often you need to keep a log book;
  - how to keep a log book.

The log book is relevant to estimating the number of business kilometres the \*car travelled in the period when you \*held it during the income year.

---

\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

## Section 28-105

---

- (3) You must keep odometer records for the period when you \*held the \*car during the income year. Subdivision 28-H tells you about odometer records, which document the total number of kilometres the car travelled in that period.
- (4) You must record the following information, in writing, before you lodge your \*income tax return:
  - (a) your estimate of the number of \*business kilometres; and
  - (b) the \*business use percentage.However, the Commissioner may allow you to record the information later.
- (5) You must retain the log book and the odometer records. Subdivision 28-I has the rules about this.

### **Subdivision 28-G—Keeping a log book**

#### **Guide to Subdivision 28-G**

#### **28-105 What this Subdivision is about**

This Subdivision tells you how to keep a log book. A log book is relevant to estimating the number of business kilometres the car travelled in the period when you held it during the income year.

#### **Table of sections**

28-110 Steps for keeping a log book

##### **Operative provisions**

28-115 Income years for which you need to keep a log book  
28-120 Choosing the 12 week period for a log book  
28-125 How to keep a log book  
28-130 Replacing one car with another

---

\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

---

## **28-110 Steps for keeping a log book**

There are 3 steps you need to follow in keeping a log book:

- identify an income year for which to keep a log book;
- choose a period of at least 12 weeks for the log book to cover;
- record journeys made in the \*car during the log book period in the course of producing your assessable income.

## **Operative provisions**

### **28-115 Income years for which you need to keep a log book**

- (1) You need to keep a log book for the first income year for which you use this method for the \*car.
- (2) Having kept a log book for one income year, you don't need to keep a new one for the next 4 or more income years unless subsection (3) or (4) requires it. If you haven't kept a new log book for 4 income years in a row, you must keep one for the next income year.  
 Example: If you keep a log book in 1997-98, you would need to keep the next one in 2002-2003, unless subsection (3) or (4) requires one sooner.
- (3) You must keep a log book for an income year if the Commissioner sends you a notice before the year directing you to keep a log book for the \*car for that year.
- (4) You must keep a log book for an income year if, during that year, you get one or more additional \*cars for which you want to use the "log book" method for that year.
- (5) When you replace one \*car with another, you might have a period when you \*hold both the new car and the old car, or a period when

---

\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

**Section 28-120**

---

you no longer \*hold the old car but do not yet hold the new car. In both these cases, you are treated for the purposes of subsection (4) as if you held the one car continuously.

- (6) You may choose to keep a log book for an income year even if you don't need to; for example, because you want to establish a higher \*business use percentage.

**28-120 Choosing the 12 week period for a log book**

- (1) The log book must cover a continuous period of at least 12 weeks throughout which you \*held the \*car. If you hold the car for less than 12 weeks, the period must be the entire period for which you held the car.
- (2) The period may overlap the start or end of the income year, so long as it includes part of the year.
- (3) If you want to use the "log book" method for 2 or more \*cars for the same income year, the log books for those cars must cover periods that are concurrent.

**28-125 How to keep a log book**

- (1) It is in your interests to record in the log book any journey made in the \*car during the log book period in the course of producing your assessable income. If a journey is not recorded, the log book will indicate a lower \*business use percentage than is actually the case.
- (2) A journey is recorded by making in the log book an entry specifying:
  - (a) the day the journey began and the day it ended;
  - (b) the \*car's odometer readings at the start and end of the journey;
  - (c) how many kilometres the car travelled on the journey;
  - (d) why the journey was made.

---

\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

## Section 28-130

---

The record must be made at the end of the journey or as soon as possible afterwards.

- (3) If 2 or more journeys in a row are made in the \*car on the same day in the course of producing your assessable income, they can be recorded as a single journey.
- (4) The following must be entered in the log book:
  - (a) when the log book period begins and ends;
  - (b) the \*car's odometer readings at the start and the end of the period;
  - (c) the total number of kilometres that the car travelled during the period;
  - (d) the number of kilometres that the car travelled, in the course of producing your assessable income, on journeys recorded in the log book;
  - (e) the number of kilometres referred to in paragraph (d), expressed as a percentage of the total number referred to in paragraph (c).

Each of the entries must be made at or as soon as possible after the start or end of the period, as appropriate.

- (5) Each entry in the log book must be in English.

### **28-130 Replacing one car with another**

- (1) For the purposes of using the “log book” method, you may nominate one \*car as having replaced another car with effect from a day specified in the nomination.
- (2) After the nomination takes effect, the replacement \*car is treated as the original car, and the original car is treated as a different car. This means that you do not need to repeat for the replacement car the steps you have already taken for the original car under this Subdivision.

---

\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Section 28-135

---

- (3) You must record the nomination in writing before you lodge your <sup>\*</sup>income tax return for the income year in which the nomination takes effect. However, the Commissioner may allow you to do it later.
- (4) You must retain the nomination document until the end of the period for which you must retain the last log book that you began to keep for the original <sup>\*</sup>car before the day of effect of the nomination.
- (5) Section 28-150 (which is about retaining log books) applies to the nomination document in the same way as it applies to that last log book.

**Subdivision 28-H—Odometer records for a period**

**Guide to Subdivision 28-H**

**28-135 What this Subdivision is about**

This Subdivision tells you how to keep odometer records for a car during a particular period. Odometer records document the total number of kilometres the car travelled during a particular period.

**Table of sections**

**Operative provision**

28-140 How to keep odometer records for a car for a period

---

<sup>\*</sup>To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

---

## **Operative provision**

### **28-140 How to keep odometer records for a car for a period**

- (1) Odometer records for a period are kept in the form of a document in which the following are entered:
  - (a) the \*car's odometer readings at the start and the end of the period;
  - (b) if there is a nomination under section 28-130 to replace the car with another \*car with effect from a day in that period—the odometer readings, at the end of that day, of both cars affected by the nomination.
- (2) Each entry under subsection (1) must be in English and must be made at or as soon as possible after the start or end of the period, or the end of the specified day, as appropriate.
- (3) The following must also be entered in the document:
  - (a) the \*car's make, model and registration number (if any);
  - (b) if the car has an internal combustion engine—its engine capacity expressed in cubic centimetres;
  - (c) if there is a nomination under section 28-130 to replace the car with another \*car—the corresponding details for the other car affected by the nomination.
- (4) Each entry under subsection (3) must be made in English and must be made before you lodge your \*income tax return.
- (5) The Commissioner may allow you to make an entry under this section after you lodge your \*income tax return.

---

\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Section 28-150

---

**Subdivision 28-I—Retaining the log book and odometer records**

**Table of sections**

28-150	Retaining the log book for the retention period
28-155	Retaining odometer records

**28-150 Retaining the log book for the retention period**

- (1) You must retain the log book:
  - (a) first, until the end of the latest income year for which you rely on the log book to support your calculation of the \*business use percentage for the \*car; and
  - (b) then for another 5 years.The period for which you must retain the log book is called the ***retention period***.
- (2) The 5 years start on the due day for lodging your \*income tax return for that latest income year. If you lodge your return later, the 5 years start on the day you lodge it.
- (3) However, the \*retention period is extended if, when the 5 years end, you are involved in a dispute with the Commissioner that relates to a deduction worked out using a \*business use percentage that you are relying on the log book to support. See section 900-170.
- (4) If you do not retain the log book for the \*retention period, you cannot deduct any amount worked out using a \*business use percentage that you are relying on the log book to support. If you have already deducted such an amount, your assessment may be amended to disallow the deduction.
- (5) For the purposes of the rules about retaining and producing records of expenses (see Subdivision 900-G), the log book is treated as a

---

\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

---

Section 28-155

---

record of the \*car expenses for each year for which you use a  
\*business use percentage that you are relying on the log book to  
support.

- (6) If you lose the log book, there are rules that might help you in  
section 900-205. For the purposes of the rules about relief from the  
effects of failing to substantiate (see Subdivision 900-H), not doing  
something required by this Division is treated in the same way as  
not doing something necessary to follow the rules in Division 900.

**28-155 Retaining odometer records**

- (1) You must retain your odometer records relating to the period when  
you \*held the \*car in the income year.
- (2) If you keep a log book for the income year, you must retain the  
odometer records for the same period as the log book, and section  
28-150 applies to them in the same way as it applies to the log  
book.
- (3) If you don't keep a log book for the income year, you must retain  
the odometer records for the same period as written evidence of a  
\*car expense for the \*car for the income year, and section 900-75  
applies to them in the same way as it applies to written evidence of  
an expense.

Note: Section 900-75 is about retaining written evidence of a car expense.

---

\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

---

**Part 2-5** Rules about deductibility of particular kinds of amounts

**Division 28** Car expenses

**Subdivision 28-J** Situations where you cannot use, or don't need to use, one of the 4 methods

Section 28-160

---

**Subdivision 28-J—Situations where you cannot use, or don't need to use, one of the 4 methods**

**Guide to Subdivision 28-J**

**28-160 What this Subdivision is about**

This Subdivision sets out the situations where you cannot use, or don't need to use, any of the 4 methods. These situations involve either the nature of your car or the way you use it.

**Table of sections**

**Operative provisions**

28-165	Exception for particular cars taken on hire
28-170	Exception for particular cars used in particular ways
28-175	Further miscellaneous exceptions
28-180	Car expenses related to award transport payments
28-185	Application of Subdivision 28-J to PAYE earners and the entities that pay them

**Operative provisions**

**28-165 Exception for particular cars taken on hire**

- (1) For particular types of \*cars taken on hire you cannot use one of the 4 methods to calculate your deductions for \*car expenses.
- (2) Instead, you must calculate the deductions under the normal principles governing deductions, including the rules for apportioning a loss or outgoing that is only partly attributable to producing assessable income.
- (3) This section applies to a taxi taken on hire.

---

\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

---

- (4) It also applies to a \*motor vehicle taken on hire under an agreement of a kind ordinarily entered into by people who take motor vehicles on hire intermittently, as the occasion requires, on an hourly, daily, weekly or short term basis, except if the motor vehicle:
- (a) has been taken on hire under successive agreements of a kind that result in substantial continuity of the motor vehicle being taken on hire; or
  - (b) it is reasonable to expect that the motor vehicle will be taken on hire under successive agreements of a kind that will so result.

### **28-170 Exception for particular cars used in particular ways**

- (1) For particular types of \*cars used in particular ways you don't need to use one of the 4 methods to calculate your deductions for \*car expenses.
- (2) You *may* use one of the 4 methods, or you may instead calculate the deductions under the normal principles governing deductions, including the rules for apportioning a loss or outgoing that is only partly attributable to producing assessable income.
- (3) This section applies if, whenever you used the \*car in the income year:
  - (a) the car was covered by the description in column 2 of an item in the table below; and
  - (b) you used the car as described in column 3 of that item.

---

\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

---

**Part 2-5** Rules about deductibility of particular kinds of amounts

**Division 28** Car expenses

**Subdivision 28-J** Situations where you cannot use, or don't need to use, one of the 4 methods

Section 28-170

Item	Column 2 Particular car	Column 3 Exempt use
1.	The *car was: (a) a panel van or utility truck; or (b) any other road vehicle designed to carry a load of less than 1 tonne (other than a vehicle designed principally to carry passengers); or (c) a taxi.	You used the car only in one or more of the following ways: (a) in the course of producing your assessable income; (b) to go between your residence and a place where you use the car in the course of producing your assessable income; (c) by providing the car to someone else to drive between his or her residence and a place where the car is used in the course of producing your assessable income; (d) for the purpose of travel that is incidental to using the car in the course of producing your assessable income; (e) for your own or someone else's private use that was minor, infrequent and irregular.
2.	The *car was part of the trading stock of a *business of selling cars that you carried on.	You used the car in the course of the business.
3.	The *car was any type of car.	You let the car on lease or hire in the course of a *business of letting cars on lease or hire that you carry on.

\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

## Section 28-175

Item	Column 2 Particular car	Column 3 Exempt use
4.	The *car was any type of car.	<p>As an employer, you provided the car for the exclusive use of one or more of the following:</p> <p>(a) your employees;</p> <p>(b) their *relatives;</p> <p>in circumstances where one or more of them was entitled to use the car for private purposes.</p> <p>Note: This Subdivision also applies to entities that are <i>not</i> employers, but pay (or are liable to pay) PAYE earnings: see section 28-185.</p>

### 28-175 Further miscellaneous exceptions

- (1) This section lists some miscellaneous cases where you don't need to use one of the 4 methods to calculate your deductions for \*car expenses.
- (2) You *may* use one of the 4 methods, or you may instead calculate the deductions under the normal principles governing deductions, including the rules for apportioning a loss or outgoing that is only partly attributable to producing assessable income.

---

\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

## Section 28-180

---

(3) The cases are as follows:

- (a) the \*car was unregistered throughout the period when you \*held it during the income year, and during that period you used it principally in the course of producing your assessable income; or
- (b) at some time during the income year the \*car was part of the trading stock of a \*business of selling cars that you carried on, and you didn't use the car at any time during that year; or
- (c) the expense is to do with repairs to or other work on the \*car, and you incurred it in the course of a \*business that you carried on of doing repairs or other work on cars.

In applying paragraph (a), the car is taken to be registered in a particular place while it is lawful to drive the car on a public road there.

### **28-180 Car expenses related to award transport payments**

- (1) Subdivision 900-I (Award transport payments) allows certain losses or outgoings to be deducted without getting written evidence. The losses or outgoings are \*transport expenses related to an allowance or reimbursement paid or payable to you by your employer under an \*industrial instrument that was in force on 29 October 1986.

Note: This Subdivision also applies to entities that are *not* employers, but pay (or are liable to pay) PAYE earnings: see section 28-185.

- (2) If that Subdivision lets you deduct \*car expenses, or parts of \*car expenses, without getting written evidence, you don't need to use any of the 4 methods to calculate your deductions for those expenses or parts of expenses.
- (3) However, your use of the 4 methods for *other* \*car expenses you incur for the \*car for the income year is affected, unless you elect

---

\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

not to rely on Subdivision 900-I. Section 900-250 deals with this matter.

## **28-185 Application of Subdivision 28-J to PAYE earners and the entities that pay them**

### *Application to PAYE earners*

- (1) If an individual is *not* an employee, but *is* a \*PAYE earner, this Subdivision applies to him or her as if:
- (a) he or she were an employee; and
  - (b) the entity (the ***notional employer***) who pays (or is liable to pay) \*PAYE earnings, because of which he or she is (or would be) a \*PAYE earner, were his or her employer; and
  - (c) any other individual who receives (or is entitled to receive) \*PAYE earnings:
    - (i) because of which the other individual is (or would be) a \*PAYE earner; and
    - (ii) that the \*notional employer pays (or is liable to pay) to the other individual;were also an employee of the notional employer.

### *Application to entities liable to PAYE earnings*

- (2) If an entity is *not* an employer, but pays (or is liable to pay) \*PAYE earnings, this Subdivision applies to the entity as if:
- (a) it were an employer; and
  - (b) an individual to whom the entity pays (or is liable to pay) \*PAYE earnings were the entity's employee.

*[The next Division is Division 36.]*

---

\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

---

Section 36-1

---

## **Division 36—Tax losses of earlier income years**

### **Table of Subdivisions**

	Guide to Division 36
36-A	Deductions for tax losses of earlier income years
36-B	Effect of you becoming bankrupt

### **Guide to Division 36**

#### **36-1 What this Division is about**

If you have more deductions for an income year than you have income, the difference is a ***tax loss*** which you may be able to deduct in a later income year.

### **Subdivision 36-A—Deductions for tax losses of earlier income years**

#### **Table of sections**

36-10	How to calculate a tax loss for an income year
36-15	How to deduct tax losses
36-20	Net exempt income
36-25	Special rules about tax losses

#### **36-10 How to calculate a tax loss for an income year**

- (1) Add up the amounts you can deduct for an income year (except <sup>\*</sup>tax losses for earlier income years).
- (2) Subtract your total assessable income.

---

<sup>\*</sup>To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

- (3) If you *\*derived exempt income*, also subtract your *\*net exempt income* (worked out under section 36-20).
- (4) Any amount remaining is your ***tax loss*** for the income year, which is called a ***loss year***.

Note: Some deductions are limited so that they cannot contribute to a tax loss. See:

- section 26-55 (Limit on certain deductions)
- section 79D of the *Income Tax Assessment Act 1936* (Limit on deductions for foreign income).

### 36-15 How to deduct tax losses

- (1) A *\*tax loss* for a *\*loss year* is deducted in a later income year as follows.

*If you have no net exempt income*

- (2) If your total assessable income for the later income year exceeds your total deductions (other than *\*tax losses*), you deduct the tax loss from that excess.

*If you have net exempt income*

- (3) If you have *\*net exempt income* for the later income year and your total assessable income (if any) for the later income year exceeds your total deductions (except *\*tax losses*), you deduct the tax loss:
  - (a) first, from your net exempt income; and
  - (b) secondly, from the part of your total assessable income that exceeds those deductions.

---

*\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.*

---

## Section 36-20

---

- (4) However, if you have \*net exempt income for the later income year and those deductions exceed your total assessable income, then:
- (a) subtract that excess from your net exempt income; and
  - (b) deduct the tax loss from any net exempt income that remains.

To work out your net exempt income: see section 36-20.

### *General*

- (5) If you have 2 or more \*tax losses, you deduct them in the order in which you incurred them.
- (6) A \*tax loss can be deducted only to the extent that it has not already been deducted.
- (7) If you cannot deduct all or part of your \*tax loss in an income year, you can carry forward to the next income year the undeducted amount. You then apply this Subdivision to work out if you can deduct the tax loss in that income year.

## **36-20 Net exempt income**

- (1) If you are an Australian resident, your ***net exempt income*** is the amount by which your total exempt income from all sources (except \*excluded exempt income) exceeds the total of:
- (a) the losses and outgoings (except capital losses and outgoings) you incurred in deriving that exempt income; and
  - (b) any taxes payable outside Australia on that exempt income.
- (2) If you are *not* an Australian resident, your ***net exempt income*** is the amount (if any) by which the total of:
- (a) your exempt income \*derived from sources in Australia (except \*excluded exempt income and \*exempt income subject to withholding tax); and

---

\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

- (b) your exempt income to which section 26AG (Certain film proceeds included in assessable income) of the *Income Tax Assessment Act 1936* applies (except \*exempt income subject to withholding tax);
- exceeds the total of:
- (c) the losses and outgoings (except capital losses and outgoings) you incurred in deriving exempt income covered by paragraph (a) or (b); and
  - (d) any taxes payable outside Australia on income covered by paragraph (b).
- (3) **Excluded exempt income** is exempt income to which any of the following provisions of the *Income Tax Assessment Act 1936* apply:
- (a) section 23AH (Foreign branch profits of Australian companies);
  - (b) section 23AI (Attributed income of controlled foreign companies);
  - (c) section 23AJ (Certain non-portfolio dividends from foreign companies);
  - (d) section 23AK (Amounts paid out of attributed foreign investment fund income);
  - (e) paragraph 23L(1)(a) (Income derived by way of the provision of employment fringe benefits);
  - (f) paragraph 99B(2)(d) or (e) (Certain attributable income of non-resident trust estates).
- (4) **Exempt income subject to withholding tax** is income that section 128D of the *Income Tax Assessment Act 1936* makes exempt because withholding tax is payable on it, or would be payable but for certain exemptions.

---

\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Section 36-25

---

**36-25 Special rules about tax losses**

*Tax losses of individuals*

Item	For the special rules about this situation ...	See:
1.	You go bankrupt, or you are released from debts under a bankruptcy law: your right to deduct tax losses of an earlier income year may be affected.	Subdivision 36-B

*Tax losses of companies*

Item	For the special rules about this situation ...	See:
1.	A company has had a change of ownership or control during the income year, and has not carried on the same business: it works out its taxable income and its tax loss in a special way.	Subdivision 165-B
2.	A company wants to deduct a tax loss. It cannot do so unless: <ul style="list-style-type: none"><li>• the same people owned the company during both the loss year and the income year; and</li><li>• no person controlled the company's voting power at any time during the income year who did not also control it during the whole of the loss year;</li></ul> or the company has carried on the same business and commenced no additional business or new transactions.	Subdivision 165-A

---

\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Item	For the special rules about this situation ...	See:
3.	One or more of these things happen: <ul style="list-style-type: none"> <li>• income is injected into a company;</li> <li>• a tax benefit is obtained from available losses or deductions;</li> <li>• a deduction is injected into a company;</li> <li>• a tax benefit is obtained because of available income.</li> </ul> The Commissioner can disallow tax losses or current year deductions.	Division 175
4.	A company can transfer a surplus amount of its tax loss to another company so that the other company can deduct the amount in the income year of the transfer. (Both companies must be members of the same wholly-owned group.)	Subdivision 170-A
<i>See also: Tax losses of pooled development funds (PDFs) below</i>		

*Tax losses of entities generally*

Item	For the special rules about this situation ...	See:
1.	You *derived income with a foreign source: your tax loss is not deductible from your assessable foreign income unless you so choose.	Section 79DA of the <i>Income Tax Assessment Act 1936</i>
2.	You have deductions in relation to deriving income with a foreign source: the amount you can deduct is limited to your foreign income of the same class.	Section 79D of the <i>Income Tax Assessment Act 1936</i>

\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

**Part 2-5** Rules about deductibility of particular kinds of amounts

**Division 36** Tax losses of earlier income years

**Subdivision 36-B** Effect of you becoming bankrupt

Section 36-30

---

Item	For the special rules about this situation ...	See:
	You have deductions in relation to deriving income under section 26AG of the <i>Income Tax Assessment Act 1936</i> from the proceeds of a film: your tax loss may have a film component, which is deductible from your film income only.	Subdivision 375-G

*Tax losses of pooled development funds (PDFs)*

Item	For the special rules about this situation ...	See:
1.	A company is a pooled development fund (PDF) at the end of an income year for which it has a tax loss: it can only deduct the loss while it is a PDF.	Section 195-5
2.	A company becomes a PDF during an income year: special rules affect how it works out a tax loss and how the loss is deducted in a later income year.	Section 195-15

**Subdivision 36-B—Effect of you becoming bankrupt**

**Guide to Subdivision 36-B**

**36-30 What this Subdivision is about**

After you become bankrupt, you cannot deduct a tax loss that you incurred beforehand. However, you may be able to deduct repayments of debts you incurred in the loss year.

**Table of sections**

---

\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

---

**Operative provisions**

- 36-35 No deduction for tax loss incurred before bankruptcy
- 36-40 Deduction for amounts paid for debts incurred before bankruptcy
- 36-45 Limit on deductions for amounts paid

**Operative provisions**

**36-35 No deduction for tax loss incurred before bankruptcy**

(1) If:

- (a) you became bankrupt; or
- (b) you were released from a debt by the operation of an Act relating to bankruptcy;

before the income year, you cannot deduct a \*tax loss that you incurred before the day on which you either became bankrupt or were released.

(2) If:

- (a) you became bankrupt before the income year; and
- (b) the bankruptcy is later annulled under section 74 of the *Bankruptcy Act 1966* because your creditors have accepted your proposal for a composition or scheme of arrangement; and
- (c) under the composition or scheme of arrangement, you have been, will be or may be released from some or all of the debts from which you would have been released if you had instead been discharged from the bankruptcy;

you cannot deduct a \*tax loss that you incurred before the day on which you became bankrupt.

**36-40 Deduction for amounts paid for debts incurred before bankruptcy**

*Tax losses generally*

---

\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Section 36-45

---

(1) If:

- (a) you pay an amount in the income year for a debt that you incurred in an earlier income year; and
- (b) you have a \*tax loss referred to in section 36-35 for that earlier income year;

you can deduct the amount paid, but only to the extent that it does not exceed so much of the debt as the Commissioner is satisfied was taken into account in calculating the amount of the tax loss.

*Film losses*

(2) If:

- (a) you pay an amount in the income year for a debt that you incurred in an earlier income year; and
- (b) you incurred the debt in the course of deriving or gaining \*assessable film income or \*exempt film income; and
- (c) you also incurred a \*film loss referred to in section 36-35 in that earlier income year;

you can deduct the amount paid, but only to the extent that it does not exceed so much of the debt as the Commissioner is satisfied was taken into account in calculating the amount of the film loss.

**36-45 Limit on deductions for amounts paid**

*Tax losses generally*

- (1) The total of your deductions under subsection 36-40(1) for amounts paid in the income year for debts incurred in the \*loss year cannot exceed the amount of the \*tax loss reduced by the sum of:
  - (a) your deductions under that subsection for amounts paid in earlier income years for debts incurred in the loss year; and
  - (b) any amounts of the tax loss deducted in earlier income years; and

---

\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Section 36-45

---

- (c) any amounts of the tax loss that, apart from section 36-35, would have been deductible from your \*net exempt income for the income year or earlier income years.

*Film losses*

- (2) The total of your deductions under subsection 36-40(2) for amounts paid in the income year for debts incurred in the \*loss year cannot exceed the amount of the \*film loss reduced by the sum of:
  - (a) your deductions under that subsection for amounts paid in earlier income years for debts incurred in the loss year; and
  - (b) any amounts of the film loss deducted in earlier income years; and
  - (c) any amounts of the film loss that, apart from section 36-35, would have been deductible from your \*net exempt film income for the income year or earlier income years.

*[The next Part is Part 2-10.]*

---

\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

---

Section 40-1

---

## **Part 2-10—Capital allowances: rules about deductibility of capital expenditure**

### **Division 40—Overview of capital allowances**

#### **Table of Subdivisions**

	Guide to Division 40
40-A	What a capital allowance is
40-B	Summary and finding table

#### **Guide to Division 40**

##### **40-1 What this Division is about**

This Division explains what a capital allowance is and sets out the main features of each capital allowance.

#### **Table of sections**

40-5	Map of Divisions 40 and 41
------	----------------------------

---

\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

---

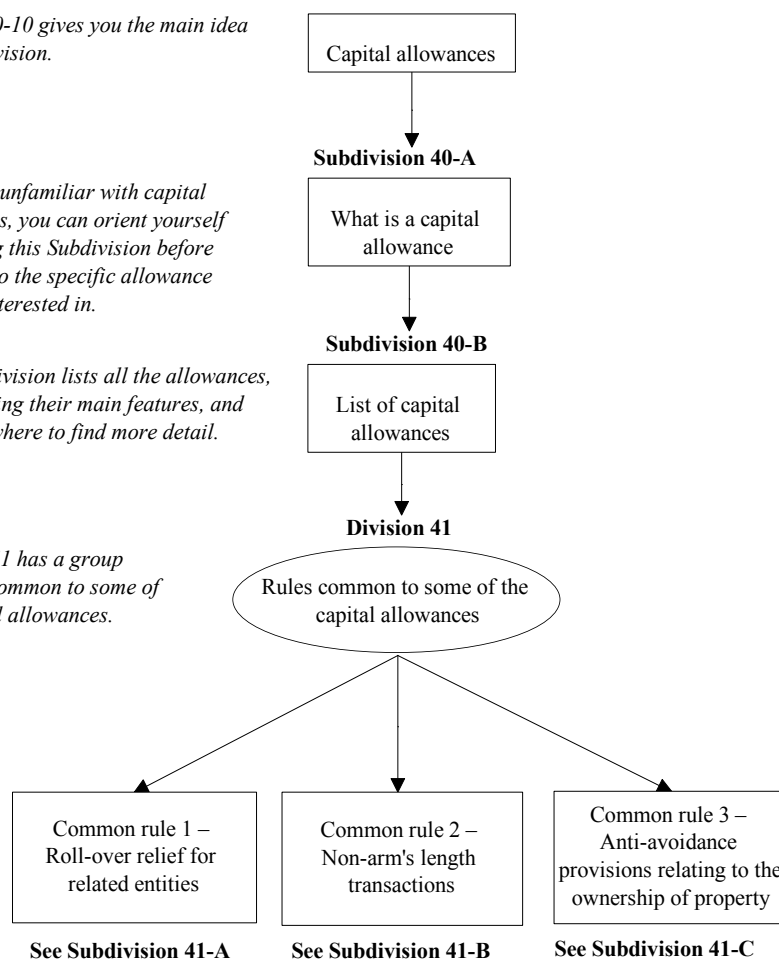
## 40-5 Map of Divisions 40 and 41

*Section 40-10 gives you the main idea of this Division.*

*If you are unfamiliar with capital allowances, you can orient yourself by reading this Subdivision before going on to the specific allowance you are interested in.*

*This Subdivision lists all the allowances, summarising their main features, and tells you where to find more detail.*

*Division 41 has a group of rules common to some of the capital allowances.*



\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Section 40-7

---

**Subdivision 40-A—What a capital allowance is**

**Table of sections**

40-7	Effect of this Division
40-10	What expenditure qualifies?
40-15	Who may deduct?
40-20	How to work out the deduction
40-25	Disposal, loss, destruction or termination of use: balancing adjustment

**40-7 Effect of this Division**

This Division (except this section) has effect as if it were a \*Guide.

Note: In interpreting an operative provision, a Guide may be considered only for limited purposes: see section 950-150.

**40-10 What expenditure qualifies?**

You can write off certain kinds of capital expenditure as deductions. Depending on the kind of expenditure, you can do this either immediately, or over a period of years. This deduction is called a *capital allowance*.

Many different kinds of capital expenditure qualify for a \*capital allowance. They are all listed in Subdivision 40-B.

**40-15 Who may deduct?**

- (1) Some \*capital allowances are available to entities in general. These are:
  - (a) depreciation of \*plant (section 54 of the *Income Tax Assessment Act 1936*); and
  - (b) capital works (Division 43).

---

\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

- (2) The other allowances are for particular industries or activities. You can see which allowances might be relevant to you by checking the list in Subdivision 40-B.

#### **40-20 How to work out the deduction**

- (1) You work out the amount of your deduction for each income year by dividing:

- the amount of expenditure you incurred;
- by:
- the length of the write off period, in income years.

For each amount of expenditure that qualified for a \*capital allowance in a given income year, you get a deduction every income year until the write off period is over.

Example: You spend \$10,000 on preparing a mining site for mining operations. In this example, assume the write off period for mining is 10 years. You may deduct \$1,000 for that income year and for each of the next 9 income years.

- (2) The rules for some of the \*capital allowances are more complicated, but they all have this general theme.

#### **40-25 Disposal, loss, destruction or termination of use: balancing adjustment**

- (1) Many of the \*capital allowances require you to make a balancing adjustment if:
- you dispose of the property on which you incurred the expenditure that qualified you for the deduction; or
  - the property is lost or destroyed.

---

\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

---

Section 40-25

---

- (2) The purpose of a balancing adjustment is to ensure that the total amount you have written off corresponds to your actual loss over the same period.
- (3) Some \*capital allowances also require you to make a balancing adjustment if you stop using the property in the way that qualified you for the deduction: for example, for producing assessable income.
- (4) You make the balancing adjustment by comparing:
  - the property's \*termination value for the purpose of the particular \*capital allowance;with:
  - the property's \*written down value for the purpose of the particular \*capital allowance.
- (5) If the \*termination value exceeds the \*written down value, the amount of the excess is included in your assessable income. However, the amount included cannot exceed the sum of any amounts you have deducted or can deduct.

If the \*termination value is less than the \*written down value, you deduct the difference.

Either way, the write off period immediately ends.

**Example:** To continue the example in section 40-20, after 7 years of writing off the site preparation costs, you sell the mining right for \$12,000. This is the termination value. The written down value is \$10,000 - \$7,000 (deductions so far claimed) = \$3,000. The termination value exceeds the written down value by \$9,000. As this is more than any deductions you have so far claimed, you include \$7,000 in your assessable income for that income year. You may no longer write off any remaining expenditure.

**Note:** If you dispose of the property there may also be capital gains tax implications arising from the disposal.

---

\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

---

- (6) The **termination value** is the value of the property when the event happened that gave rise to the balancing adjustment.

The **written down value** is your original expenditure in respect of the property less any amounts you can deduct or have deducted.

Note: The rules for different capital allowances include different methods of measuring the termination value and the written down value.

## Subdivision 40-B—Summary and finding table

### 40-30 Table of capital allowances

- (1) The table on the next page has a list of all the \*capital allowances. It gives you the following key information about each:
- what kind of expenditure qualifies for the allowance;
  - who may deduct it;
  - how long the write off period is;
  - what happens when you dispose of the property.
- (2) The table also shows where you can find the detailed provisions for each of the allowances. The provisions of the *Income Tax Assessment Act 1997* are identified in normal text. The other provisions, **in bold**, are provisions of the *Income Tax Assessment Act 1936*.

---

\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

---

	<b>What expenditure qualifies?</b>	<b>Who may deduct?</b>	<b>Over how long?</b>	<b>Disposal of property: what happens?</b>	<b>For more detail, see ...</b>
<b>Capital works: buildings, structural improvements, environment protection earthworks and extensions, alterations or improvements</b>	Capital construction costs of buildings, structural improvements, environment protection earthworks and extensions, alterations or improvements	Owners, some lessees and some holders of quasi-ownership rights over land granted by an exempt Australian government agency or an exempt foreign government agency	25 years or 40 years or some period between 25 years and 40 years depending when the works began and how you use the works	Destruction of capital works can give rise to a balancing deduction	Division 43
<b>Depreciation</b>	Cost of plant or articles used (or installed ready for use) to produce assessable income	Owners and some lessees	Effective life of plant or article	Balancing adjustment required	<b>Section 54</b>
<b>Development allowance</b>	Capital expenditure on certain kinds of plant and equipment for use in very large development projects	Owners and lessees	Immediate 10% write off when a unit of eligible property is first used for producing assessable income or is installed ready for such use	Deduction disallowed if property disposed of within twelve months of first income producing use	<b>Subdivision B of Division 3 of Part III</b>
	<b>What expenditure qualifies?</b>	<b>Who may deduct?</b>	<b>Over how long?</b>	<b>Disposal of property: what happens?</b>	<b>For more detail, see ...</b>

\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

<b>Drought investment allowance</b>	Capital expenditure on certain kinds of structural improvements and equipment for use in a primary production business for the purpose of producing assessable income	Primary producers, and finance companies that lease the improvements or equipment to primary producers	Immediate 10% write off when a unit of property is first used in a primary production business for producing assessable income or is installed ready for such use	Deduction disallowed if property disposed of within 12 months of first use, and if property disposed of later in accordance with intention formed before first use	<b>Part XII</b>
<b>Electricity connections</b>	Capital expenditure on connecting or upgrading mains electricity facilities used or intended for use in a business for producing assessable income on land in Australia	Any entity with an interest in the land	10 years	This is not applicable	<b>Section 70A</b>
<b>Environmental impact studies</b>	Expenditure on study to evaluate the environmental impact of an income producing project	Any entity with an income producing project	Lesser of 10 years or the estimated life of the income producing project	This is not applicable	<b>Subdivision C of Division 3 of Part III</b>
	<b>What expenditure qualifies?</b>	<b>Who may deduct?</b>	<b>Over how long?</b>	<b>Disposal of property: what happens?</b>	<b>For more detail, see ...</b>
<b>Environment protection</b>	Expenditure incurred in dealing with pollution or waste	Any entity	Immediate 100% write off	This is not applicable	<b>Subdivision CA of Division 3 of Part III</b>

\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

<b>Films, Australian</b>	Capital expenditure contributed to the cost of producing an Australian film	Any entity except partnerships (there are special rules for partners)	Immediate 100% write off	Consideration for disposal of copyright in the film is assessable income	<b>Division 10BA of Part III</b>
<b>Grapevines</b>	Expenditure on establishing a grapevine	Entity carrying on primary production business	4 years	Further deduction allowed if vine destroyed	<b>Section 75AA</b>
<b>Horticultural plants</b>	Expenditure on establishing a horticultural plant	Entity carrying on horticultural business	1 to 15 years, depending on effective life of horticultural plant	Further deduction allowed if horticultural plant destroyed	<b>Division 10F of Part III</b>
<b>Industrial property</b>	Capital expenditure on acquiring a unit of industrial property to produce assessable income	Any entity	Effective life (2 years to 25 years)	Balancing adjustment required	<b>Division 10B of Part III</b>
	<b>What expenditure qualifies?</b>	<b>Who may deduct?</b>	<b>Over how long?</b>	<b>Disposal of property: what happens?</b>	<b>For more detail, see ...</b>
<b>Land degradation</b>	Expenditure on certain activities to prevent degradation of land	Entity who carries on a primary production business, or a business on rural land except mining or quarrying	Immediate 100% write off	This is not applicable	<b>Section 75D</b>
<b>Mining and quarrying: exploration or prospecting</b>	Expenditure on exploring or prospecting for minerals	Entity engaged in exploration or prospecting	Immediate 100% write off	Balancing adjustment required	Subdivision 330-A

\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

<b>Mining and quarrying: development and operation of a mine or quarry</b>	Capital expenditure incurred in relation to mining or quarrying operations	Entity carrying on or proposing to carry on mining or quarrying operations	<b>Mining operations:</b> lesser of 10 years or estimated life of mine  <b>Quarrying operations:</b> lesser of 20 years or estimated life of quarry	Balancing adjustment required	Subdivision 330-C
<b>Mining and quarrying: transporting minerals or quarry materials</b>	Capital expenditure incurred in transporting minerals or quarry materials	Entity in a transport business or entities carrying on mining or quarrying operations	Minerals: 10 years Quarry materials: 20 years Starts in the year when transport begins	Balancing adjustment required	Subdivision 330-H
	<b>What expenditure qualifies?</b>	<b>Who may deduct?</b>	<b>Over how long?</b>	<b>Disposal of property: what happens?</b>	<b>For more detail, see ...</b>
<b>Mining and quarrying: mine site rehabilitation</b>	Expenditure incurred on rehabilitation of a mining site, or associated site, to restore it to its pre-mining condition	Entity who has carried on mining, quarrying, prospecting or associated activities	Immediate 100% write off	This is not applicable	Subdivision 330-I

\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

<b>Research and development ("R&amp;D")</b>	1. Contracted expenditure for another agency to do research for the company	Australian companies engaging in R & D.	1. Immediate 150% write off	1. This is not applicable	<b>Section 73B</b>
	2. Core technology expenditure for R&D		2. Immediate 100% write off	2. This is not applicable	
	3. Expenditure on plant exclusively for R&D		3. Write off 1/3 or 1/2 of expenditure. Maximum period is 3 years	3. Balancing adjustment required	
	4. Salary and certain other R&D expenditure		4. Expenditure more than \$20,000; immediate 150% write off	4. This is not applicable	
	<b>What expenditure qualifies?</b>	<b>Who may deduct?</b>	<b>Over how long?</b>	<b>Disposal of property: what happens?</b>	<b>For more detail, see ...</b>
<b>Telephone lines</b>	Capital expenditure on a telephone line on land on which a business of primary production is carried on	Entity with an interest in the land	10 years	This is not applicable	<b>Section 70</b>
<b>Timber mill buildings</b>	Expenditure on buildings used for timber milling business, if the buildings are in a forest or adjacent to a timber felling area	Entity carrying on timber milling business	Lesser of 25 years or estimated life of building	Balancing adjustment required	<b>Subdivision B of Division 10A of Part III</b>

\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

<b>Timber operations: access roads</b>	Expenditure on access roads to area of timber operations	Entity carrying on timber operations	Lesser of 25 years or estimated life of road	Balancing adjustment required	<b>Subdivision A of Division 10A of Part III</b>
<b>Water conservation</b>	Expenditure on plant or structural improvements for conserving or conveying water	Entity carrying on primary production business	3 years	This is not applicable	<b>Section 75B</b>

---

\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

---

Section 41-1

---

## **Division 41—Common rules for capital allowances**

### **Table of Subdivisions**

	Guide to Division 41
41-A	Common rule 1 (Roll-over relief for related entities)
41-B	Common rule 2 (Non-arm's length transactions)
41-C	Common rule 3 (Anti-avoidance provisions relating to the ownership of property)

### **Guide to Division 41**

#### **41-1 What this Division is about**

<p>This Division has a group of rules that are common to some of the capital allowances.</p>
----------------------------------------------------------------------------------------------

### **Table of sections**

41-5	Summary and finding table
------	---------------------------

#### **41-5 Summary and finding table**

- (1) The following table shows which of the common rules apply to some \*capital allowances.
- (2) For some \*capital allowances, the common rules need to be read with modifications made by the provisions referred to in the table.

---

\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

---

	<b>Common rule 1 (Roll-over relief for related entities)</b>	<b>Common rule 2 (Non-arm's length transactions)</b>	<b>Common rule 3 (Anti-avoidance provisions relating to the ownership of property)</b>
<b>Capital works: buildings, structural improvements, environment protection earthworks and extensions, alterations or improvements</b>	Does not apply	Does not apply	Applies without modification
<b>Mining and quarrying: exploration or prospecting</b>	Applies as modified by section 330-545	Applies as modified by section 330-560	Applies without modification
<b>Mining and quarrying: operation and development of a mine or quarry</b>	Applies as modified by section 330-545	Applies as modified by section 330-560	Applies without modification
<b>Mining and quarrying: transporting minerals or quarry materials</b>	Applies as modified by section 330-545	Applies as modified by section 330-560	Applies without modification
<b>Mining and quarrying: mine site rehabilitation</b>	Does not apply	Applies as modified by section 330-560	Does not apply

\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

## Section 41-10

---

### **Subdivision 41-A—Common rule 1 (Roll-over relief for related entities)**

#### **Guide to Common rule 1**

##### **41-10 What this Common rule is about**

This Rule tells you when roll-over relief can be obtained to delay a balancing adjustment in relation to the disposal of property. It also tells you what the roll-over relief consists of.

#### **Table of sections**

##### **Operative provisions**

41-15	When is roll-over relief available?
41-20	Disposals of property
41-25	How are the balancing adjustment provisions affected?
41-30	What is the effect of the roll-over on the transferor's and transferee's entitlement to a deduction?
41-35	Subsequent applications of this Common rule—relief available even if subsequent transferor got no deduction
41-40	Subsequent disposal—modify the balancing adjustment accordingly
41-45	Commissioner may amend assessment after recoupment despite section 170 of the <i>Income Tax Assessment Act 1936</i>

#### **Operative provisions**

##### **41-15 When is roll-over relief available?**

This Common rule applies in relation to the disposal of property in the 1997-98 income year or a later income year by one entity (the ***transferor***) to another entity (the ***transferee***) in the circumstances set out in section 41-20.

---

\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

## 41-20 Disposals of property

- (1) Roll-over relief is available if:
- (a) the transferor can deduct an amount for that income year, or has deducted or can deduct an amount for an earlier income year, in respect of the property under the rules for the \*capital allowance; and
  - (b) if the transferor is not a partnership—section 160ZZM, 160ZZMA, 160ZZN or 160ZZO of the *Income Tax Assessment Act 1936*:
    - (i) applies to the disposal; or
    - (ii) if the property is a \*motor vehicle covered by paragraph 82AF(2)(a) of that Act—would apply to the disposal if a reference in those sections to an asset included a reference to a motor vehicle of that kind; and
  - (c) if the transferor is a partnership—the property is partnership property and section 160ZZNA of the *Income Tax Assessment Act 1936*:
    - (i) applies to the disposal, by all of the partners, of their interests in the property; or
    - (ii) if the property is a \*motor vehicle covered by paragraph 82AF(2)(a) of that Act—would apply to the disposal, by all of the partners, of their interests in the property if a reference in that section to an asset included a reference to a motor vehicle of that kind.

Note: If roll-over relief is available, there are certain record keeping requirements that arise out of the disposal: see section 262A of the *Income Tax Assessment Act 1936*.

- (2) Roll-over relief is also available if the transferor and the transferee jointly elect for it under subsection 330-520(4).

Note 1: Section 330-520 is about partial changes of ownership.

---

\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

---

**Part 2-10** Capital allowances: rules about deductibility of capital expenditure

**Division 41** Common rules for capital allowances

**Subdivision 41-A** Common rule 1 (Roll-over relief for related entities)

Section 41-25

---

Note 2: If the transferor and transferee do so elect, there are certain record keeping requirements that arise from the election: see section 262A of the *Income Tax Assessment Act 1936*.

**41-25 How are the balancing adjustment provisions affected?**

- (1) There is no need for a balancing adjustment in relation to the disposal. Disregard any rule for the \*capital allowance that requires one.

Note: If there is a later disposal of the property where roll-over relief is not available, section 41-40 tells you how the balancing adjustment is affected.

- (2) If roll-over relief is available in relation to 2 or more disposals of the same property, this section is applied to each of the disposals in succession.

**41-30 What is the effect of the roll-over on the transferor's and transferee's entitlement to a deduction?**

*Transferor loses entitlement to a deduction*

- (1) If, assuming the disposal had never happened, the rules for the \*capital allowance would have entitled the transferor to a deduction of a particular amount in respect of capital expenditure in respect of the property for that income year or a later income year, then the transferor loses the entitlement.

*Transferee gains entitlement to a deduction*

- (2) To gain the entitlement, the transferee must satisfy the rules for the \*capital allowance in relation to the income year for which the transferee claims the deduction under those rules.

Note: For expenditure that is written off over a number of income years, the transferee is only entitled to a deduction of a particular amount in respect of the property for the balance of the transferor's write off period.

---

\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

- (3) If roll-over relief is available in relation to 2 or more disposals of the same property, this section is applied to each of the disposals in succession.

**41-35 Subsequent applications of this Common rule—relief available even if subsequent transferor got no deduction**

If, apart from this section, this Common rule has applied to the disposal of the property to the transferee, then, in working out whether this Common rule applies to a subsequent disposal of the property by:

- (a) the transferee; or
- (b) one or more subsequent transferees;

this Common rule has effect as if paragraph 41-20(1)(a) (which deals with deductions) were omitted.

**41-40 Subsequent disposal—modify the balancing adjustment accordingly**

- (1) If, after the disposal of the property to the transferee:
- (a) the property is lost or destroyed; or
  - (b) the transferee disposes of the property in circumstances where this Common rule does not apply to the disposal; or
  - (c) the transferee stops using the property for purposes that qualify expenditure on the property for a deduction under the rules for the \*capital allowance;
- the balancing adjustment is affected in 2 ways.

*Transferee taken to have inherited transferor's deductions*

- (2) First:
- (a) the total amounts deducted or deductible by the transferor, under the rules for the \*capital allowance, in relation to the property; or

---

\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Section 41-45

---

- (b) if there have been 2 or more prior applications of this Common rule—the total amounts deducted or deductible by the prior transferors, under the rules for the \*capital allowance, in relation to the property;  
are taken to have been deducted or deductible by the transferee, under the rules for the capital allowance, in relation to the property.

*Transferee taken to have incurred transferor's total deductible capital expenditure*

- (3) Second:
  - (a) the total capital expenditure (of a kind that qualifies for a deduction under the rules for the \*capital allowance) of the transferor in relation to the property; or
  - (b) if there have been 2 or more prior applications of this Common rule—the total capital expenditure (of a kind that qualifies for a deduction under the rules for the \*capital allowance) of the prior transferors in relation to the property;  
is taken to have been total capital expenditure (of a kind that qualifies for a deduction under the rules for the capital allowance) of the transferee in relation to the property.

**41-45 Commissioner may amend assessment after recoupment despite section 170 of the *Income Tax Assessment Act 1936***

Section 170 of the *Income Tax Assessment Act 1936* does not stop the Commissioner amending, at any time, an assessment of the transferee, if section 330-585 (which is about the recoupment of capital expenditure) has applied to:

- (a) the transferor; or
- (b) if there have been 2 or more prior applications of this Common rule—any of the prior transferors of the property.

---

\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

**Subdivision 41-B—Common rule 2 (Non-arm's length transactions)**

**41-65 Non-arm's length transactions**

- (1) If:
- (a) a person incurs expenditure in connection with a transaction; and
  - (b) an amount is deductible in respect of the expenditure under the rules for the \*capital allowance; and
  - (c) the parties to the transaction do not deal with each other at arm's length; and
  - (d) the amount of the expenditure is greater than the market value of what the expenditure is for;
- the amount of the expenditure is instead taken to be that market value.
- (2) If:
- (a) the parties to a transaction do not deal with each other at arm's length; and
  - (b) the transaction is a disposal of property; and
  - (c) the party disposing of the property has incurred capital expenditure in respect of the property that qualified for a deduction under the rules for the \*capital allowance; and
  - (d) that party receives an amount under the transaction that is less than the market value of what that amount is for;
- that party is taken to have received that market value instead.
- (3) In determining whether the parties dealt at arm's length, consider any connection between them, as well as any other relevant circumstance.

---

\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

---

**Part 2-10** Capital allowances: rules about deductibility of capital expenditure

**Division 41** Common rules for capital allowances

**Subdivision 41-C** Common rule 3 (Anti-avoidance provisions relating to the ownership of property)

## Section 41-85

---

### **Subdivision 41-C—Common rule 3 (Anti-avoidance provisions relating to the ownership of property)**

#### **41-85 You are taken to be owner of property for purposes of certain anti-avoidance provisions**

- (1) This section applies if:
  - (a) amounts are deductible by you in respect of property under the rules for the \*capital allowance; and
  - (b) you are not the owner of the property for the purposes of an anti-avoidance provision listed in subsection (3).
- (2) That anti-avoidance provision, to the extent that it relates to deductions under the rules for the \*capital allowance, applies as if you were the owner of the property instead of any other person.
- (3) The anti-avoidance provisions that subsection (1) refers to are the following:
  - (a) section 51AD (Deductions not allowable in respect of property under certain leveraged arrangements) of the *Income Tax Assessment Act 1936*;
  - (b) Division 16D (Certain arrangements relating to the use of property) of Part III of the *Income Tax Assessment Act 1936*.

*[The next Division is Division 43.]*

---

\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

---

## **Division 43—Deductions for capital works**

### **Table of Subdivisions**

	Guide to Division 43
43-A	Key operative provisions
43-B	Establishing the deduction base
43-C	Your area and your construction expenditure
43-D	Deductible uses of capital works
43-E	Special rules about uses
43-F	Calculation of deduction
43-G	Undeducted construction expenditure
43-H	Balancing deduction on destruction of capital works

### **Guide to Division 43**

#### **43-1 What this Division is about**

You can deduct certain capital expenditure on assessable income producing buildings and other capital works. This Division sets out the rules for working out those deductions.

#### **Table of sections**

43-2	Key concepts used in this Division
------	------------------------------------

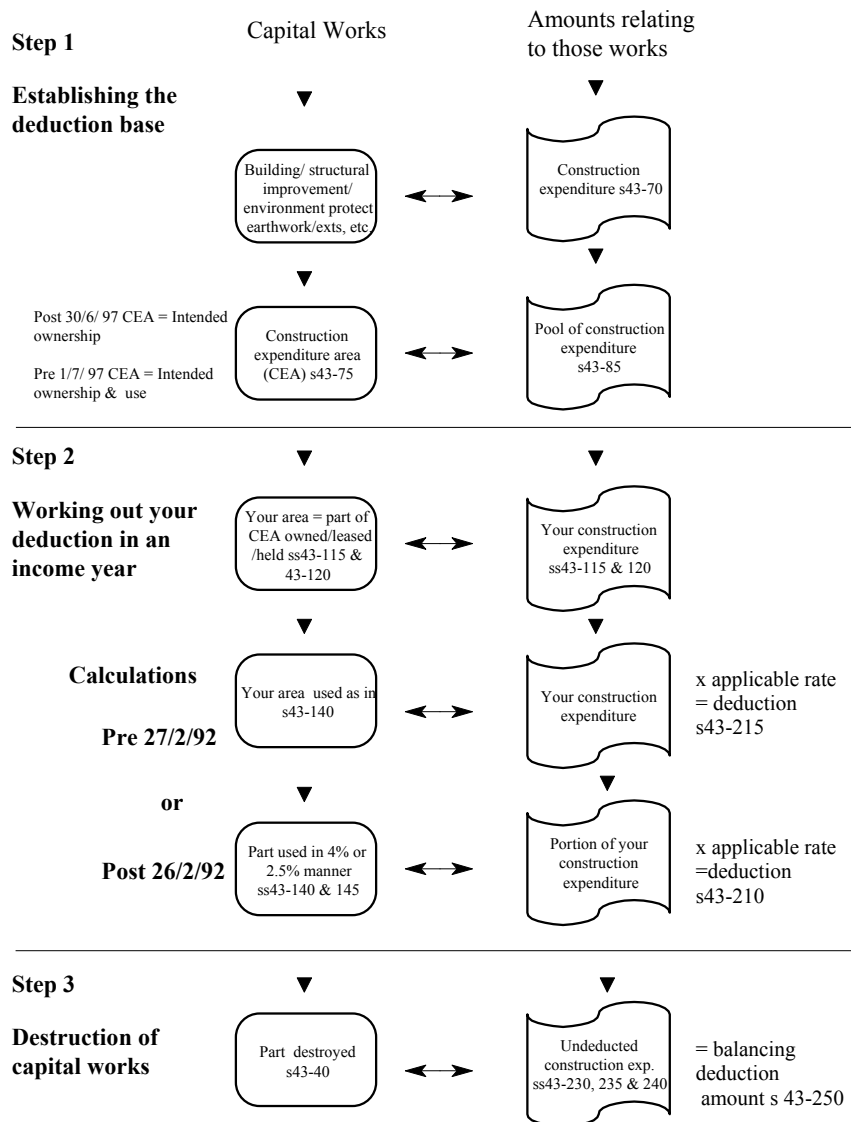
#### **43-2 Key concepts used in this Division**

The following graphic introduces the key concepts used in this Division and shows the relationships between them.

---

\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Section 43-2



\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

## **Subdivision 43-A—Key operative provisions**

### **Guide to Subdivision 43-A**

#### **43-5 What this Subdivision is about**

This Subdivision contains the key operative provisions for this Division, including all of the deduction entitlement provisions. You should read all of this Subdivision to understand how this Division works.

#### **Table of sections**

##### **Operative provisions**

43-10	Deductions for capital works
43-15	Amount you can deduct
43-20	Capital works to which this Division applies
43-25	Rate of deduction
43-30	No deduction until construction is complete
43-35	Requirement for body corporate to be registered under the Industry Research and Development Act
43-40	Deduction for destruction of capital works
43-45	Application of Division 41 common rules
43-50	Links and signposts to other parts of the Act
43-55	Anti-avoidance—arrangement etc. with tax-exempt entity

### **Operative provisions**

#### **43-10 Deductions for capital works**

- (1) You can deduct an amount for capital works for an income year.
- (2) You can only deduct the amount if:
  - (a) the capital works have a \*construction expenditure area; and

---

\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

## Section 43-15

---

- (b) there is a \*pool of construction expenditure for that area; and
- (c) you use \*your area in the income year in the way set out in Table 43-140 (Current year use).

Note 1: The deduction is limited to capital works to which this Division applies, see section 43-20.

Note 2: Amongst other things, the definition of ***your area*** ensures that only owners and certain lessees of capital works, and certain holders of quasi-ownership rights over land on which capital works are constructed, can deduct an amount under this Division.

### 43-15 Amount you can deduct

- (1) The amount you can deduct is a portion of \*your construction expenditure. However, it cannot exceed the amount of \*undeducted construction expenditure for \*your area.

Note: The limit in this subsection has 2 effects:

- It ensures that not more than 100% of your construction expenditure can be deducted.
- It imposes a time limit on the period over which your construction expenditure can be deducted. For capital works begun before 27 February 1992, that period will be 25 years if the rate of deduction is 4% or 40 years if the rate is 2.5%. For other capital works, the period will be 25 years or 40 years or some period between 25 and 40 years depending on their use.

- (2) Your deduction is calculated under section 43-210 or 43-215.

### 43-20 Capital works to which this Division applies

#### *Buildings*

- (1) This Division applies to capital works being a building, or an extension, alteration or improvement to a building:
  - (a) begun in Australia after 21 August 1979; or
  - (b) begun outside Australia after 21 August 1990.

Note: Section 43-80 explains when capital works begin.

---

\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

*Structural improvements*

- (2) This Division also applies to capital works (other than capital works referred to in subsection (1)) begun after 26 February 1992 that are structural improvements, or extensions, alterations or improvements to structural improvements, whether they are in or outside Australia.
- (3) Some examples of structural improvements are:
  - (a) sealed roads, sealed driveways, sealed car parks, sealed airport runways, bridges, pipelines, lined road tunnels, retaining walls, fences, concrete or rock dams and artificial sports fields; and
  - (b) earthworks that are integral to the construction of a structural improvement (other than a structural improvement described in subsection (4)), for example, embankments, culverts and tunnels associated with a runway, road or railway.
- (4) This Division does not apply to structural improvements being:
  - (a) earthworks that:
    - (i) are not integral to the installation or construction of a structure; and
    - (ii) are permanent (assuming they are maintained in reasonably good order and condition); and
    - (iii) can be economically maintained in reasonably good order and condition for an indefinite period;  
for example, unlined channels, unlined basins, earth tanks and dirt tracks; or
  - (b) earthworks that merely create artificial landscapes, for example, grass golf course fairways and greens, gardens, and grass sports fields.

---

\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

---

## Section 43-25

---

### *Environment protection earthworks*

- (5) This Division also applies to capital works being earthworks, or extensions, alterations or improvements to earthworks, if:
- (a) they are constructed as a result of carrying out an eligible environment protection activity within the meaning of section 82BM of the *Income Tax Assessment Act 1936*; and
  - (b) they can be economically maintained in reasonably good order and condition for an indefinite period; and
  - (c) they are not integral to the construction of capital works; and
  - (d) the expenditure on the capital works was incurred after 18 August 1992.

Note: This subsection allows you to deduct an amount for some earthworks that are excluded by paragraph (4)(a) if the earthworks are constructed in carrying out an eligible environment protection activity.

### **43-25 Rate of deduction**

- (1) For capital works begun after 26 February 1992, there is a basic entitlement to a rate of 2.5% for parts used as described in Table 43-140 (Current year use). The rate increases to 4% for parts used as described in Table 43-145 (Use in the 4% manner).
- (2) For capital works begun before 27 February 1992 and used as described in Table 43-140, the rate is:
- (a) 4% if the capital works were begun after 21 August 1984 and before 16 September 1987; or
  - (b) 2.5% in any other case.

Note: Section 43-80 explains when capital works begin.

### **43-30 No deduction until construction is complete**

You cannot deduct an amount for any period before the completion of construction of the capital works even though you used them, or part of them, before completion.

---

\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

### **43-35 Requirement for body corporate to be registered under the Industry Research and Development Act**

A body corporate may deduct an amount under this Division on the basis of using capital works for the purpose of carrying on \*research and development activities only if the body corporate is registered under section 39J (Registration of eligible companies) or 39P (Joint registration) of the *Industry Research and Development Act 1986*.

Note: Research and development activities must be carried on in connection with a business carried on for the purpose of producing assessable income, see section 43-195.

### **43-40 Deduction for destruction of capital works**

- (1) You can deduct an amount if all or a part of \*your area is destroyed in an income year and:
  - (a) you have been allowed, or can claim, a deduction under this Division, or Division 10C or 10D of Part III of the *Income Tax Assessment Act 1936*, for your area; and
  - (b) there is an amount of \*undeducted construction expenditure for your area; and
  - (c) you were using your area in the way that applies to it under Table 43-140 (Current year use) immediately before the destruction or, if not, neither you nor any other entity used your area for any purpose since it was last used by you in that way.
- (2) The deduction is allowable in the income year in which the destruction occurs, and is calculated under section 43-250.

Note: The effect of this provision is to allow you to deduct an amount in the income year in which the capital works are destroyed for all of your construction expenditure that has not yet been deducted. However, you must reduce the deduction by any insurance and salvage receipts.

---

\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

---

Section 43-45

---

**43-45 Application of Division 41 common rules**

Common rule 3 in Division 41 applies to deductions under this Division.

**43-50 Links and signposts to other parts of the Act**

*Links*

- (1) No part of a \*pool of construction expenditure can be an allowable deduction, or taken into account in working out the amount of an allowable deduction, under a provision of this Act other than this Division.
- (2) No part of an amount incurred by an entity in acquiring capital works for which there is a \*pool of construction expenditure can be an allowable deduction, or taken into account in working out the amount of an allowable deduction, under a provision of this Act other than this Division.
- (3) You will be taken not to be the owner of any part of capital works that are the subject of a lease that you have elected to treat as a disposal of an asset under section 160ZSA of the *Income Tax Assessment Act 1936*. The lessee or sublessee will be taken to be the owner of that part.

Note 1: Section 160ZSA allows holders of estates in fee simple and lessees of land who have certain leases or subleases with terms exceeding 50 years to elect to treat the grant of the lease or sublease as the disposal of an asset for the purposes of the capital gains and losses provisions.

Note 2: See subsection 43-180(3) for the effect of the rule in subsection (3) of this section on the need to own 10 apartments, units or flats in an apartment building.

---

\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

*Signposts*

- (4) Subsection 51AE(14) of the *Income Tax Assessment Act 1936* treats property that is used for non-deductible entertainment as not being used for the \*purpose of producing assessable income.
- (5) Even if you are not using property for the \*purpose of producing assessable income, you will be taken to do so in particular circumstances, see section 330-455 of this Act (dealing with property used for \*rehabilitation) and sections 82BG and 82BR of the *Income Tax Assessment Act 1936* (dealing with environmental impact or protection activities).
- (6) There are special record-keeping rules that apply to this Division in subsection 262A(4AJA) of the *Income Tax Assessment Act 1936*.

**43-55 Anti-avoidance—arrangement etc. with tax-exempt entity**

- (1) You will not be allowed a deduction under this Division for an income year if the Commissioner is satisfied that:
  - (a) you entered into an \*arrangement with:
    - (i) an entity to which paragraph 23(d), (e), (ea), (eb), (ec), (f), (g), (h), (j) or (k) of the *Income Tax Assessment Act 1936* (dealing with \*exempt income) applies; or
    - (ii) an STB (within the meaning of Division 1AB of Part III of that Act) whose \*ordinary income and \*statutory income is exempt from income tax;  
under which you were to pay an amount, or transfer property, directly or indirectly, to the entity; and
  - (b) the amount of the payment or the value of the property is calculated by reference to the amount of a deduction allowable to you under this Division; and
  - (c) a purpose of the arrangement that is not a merely incidental purpose is to ensure that the benefit of the deduction would

---

\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Section 43-60

---

pass wholly or substantially to the entity, whether directly or indirectly.

- (2) Subsection (1) applies to \*arrangements entered into with an entity referred to in subparagraph (1)(a)(i) after 1 May 1980 that relate to deductions for \*hotel buildings or \*apartment buildings begun before 1 July 1997.
- (3) Subsection (1) also applies to \*arrangements entered into with an entity referred to in subparagraph (1)(a)(ii) after 30 June 1994 that relate to deductions for \*hotel buildings or \*apartment buildings begun before 1 July 1997.

**Subdivision 43-B—Establishing the deduction base**

**Guide to Subdivision 43-B**

**43-60 What this Subdivision is about**

This Subdivision explains the meaning of the terms *construction expenditure*, *construction expenditure area* and *pool of construction expenditure*.

**Table of sections**

43-65 Explanatory material

**Operative provisions**

43-70 What is construction expenditure?

43-75 Construction expenditure area

43-80 When capital works begin

43-85 Pools of construction expenditure

43-90 Table of intended use at time of completion of construction

43-95 Meaning of *hotel building* and *apartment building*

43-100 Certificates by Industry Research and Development Board

---

\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

## 43-65 Explanatory material

Expenditure in respect of the construction of capital works is only eligible for a deduction under this Division if there is a \*construction expenditure area for the capital works. The area defined as the construction expenditure area may comprise the whole of the capital works or only part of them.

Whether there is a \*construction expenditure area for capital works and how it is identified depends on the following factors:

- the type of expenditure incurred;
- the time when the capital works began;
- the area of the capital works that is to be owned, leased or held by the entity that incurred the expenditure;
- for capital works begun before 1 July 1997, the area of the capital works that was to be used in a particular manner.

A \*pool of construction expenditure is that part of an amount of \*construction expenditure that is attributable to a particular \*construction expenditure area.

## Operative provisions

### 43-70 What is construction expenditure?

- (1) **Construction expenditure** is capital expenditure incurred in respect of the construction of capital works.
- (2) **Construction expenditure** does not include:
  - (a) expenditure on acquiring land; or
  - (b) expenditure on demolishing existing structures; or

---

\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

---

Section 43-75

---

- (c) expenditure on clearing, levelling, filling, draining or otherwise preparing the construction site prior to carrying out excavation works; or
- (d) expenditure on landscaping; or
- (e) expenditure on \*plant; or
- (f) expenditure on property for which a deduction is allowable, or would be allowable if the property were for use for the \*purpose of producing assessable income, under section 73A (scientific research), 75B (conserving or conveying water), 75D (preventing land degradation), 124F (timber operations) or 124JA (timber mill buildings), or Division 10 (mining and quarrying), 10AAA (transport of minerals and quarry materials) or 10AA (prospecting for and mining petroleum) of Part III, of the *Income Tax Assessment Act 1936* or Division 330 (mining and quarrying) of the *Income Tax Assessment Act 1997*; or
- (g) expenditure on property for which a deduction is allowable, or would be allowable if the property were for use for carrying on \*research and development activities, under section 73B of the *Income Tax Assessment Act 1936*; or
- (h) eligible heritage conservation expenditure within the meaning of Subdivision AAD of Division 17 of Part III of the *Income Tax Assessment Act 1936*.

Note: Paragraph (2)(g) only affects buildings begun before 21 November 1987, that were acquired or constructed under contracts entered into before that date or that were intended before that date to be used exclusively for research and development activities.

**43-75 Construction expenditure area**

- (1) The ***construction expenditure area*** of capital works begun after 30 June 1997 is the part of the capital works on which the \*construction expenditure was incurred that, at the time when it was incurred by an entity, was to be owned or leased by the entity

---

\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

or held by the entity under a \*quasi-ownership right over land granted by an \*exempt Australian government agency or an \*exempt foreign government agency.

Note: Section 43-80 explains when capital works begin.

- (2) The **construction expenditure area** of capital works begun before 1 July 1997 is the part of the capital works on which the \*construction expenditure was incurred that:
- (a) at the time when it was incurred by an entity, was to be owned or leased by the entity or held by the entity under a \*quasi-ownership right over land granted by an \*exempt Australian government agency or an \*exempt foreign government agency; and
  - (b) at the time of completion of construction, was to be used in the way described in Column 3 of Table 43-90 (intended use at completion) for the time period when the capital works began as set out in Column 1.
- (3) There is taken to be a **construction expenditure area** for capital works purchased by an entity from another entity if:
- (a) the capital works would have had a construction expenditure area but for the fact that the other entity did not incur capital expenditure in constructing the capital works; and
  - (b) the other entity is not an \*associate of the entity; and
  - (c) the other entity constructed the capital works on land that it owned or leased in the course of a business that included the construction and sale of capital works of that kind.

Note: Subsection (3) makes capital works purchased from a speculative builder eligible for deduction in the hands of the first and subsequent purchasers.

- (4) The construction of the capital works must be complete before the \*construction expenditure area is determined.

---

\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

**Section 43-80**

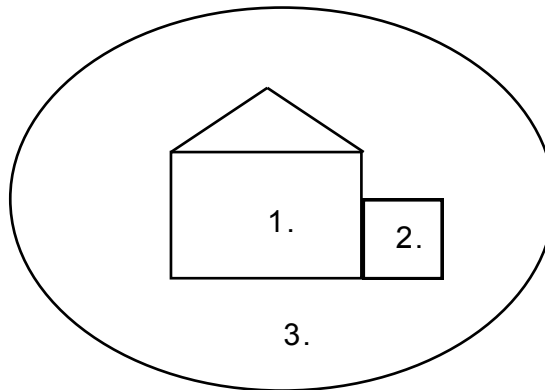
---

- (5) Only one \*construction expenditure area is created each time an entity constructs capital works.

Example: An entity undertakes the construction of a building. During the course of construction, the entity makes 3 progress payments to the builder. There is still only one construction expenditure area.

- (6) A separate \*construction expenditure area will be created each time an entity undertakes the construction of capital works.

Example: In the diagram below, area 1 relates to the original construction of a building which gives rise to one *construction expenditure area*. Area 2 is a subsequent extension of the same building which gives rise to another, while area 3 is a later renovation of the entire building which gives rise to another.



**43-80 When capital works begin**

Capital works are taken to begin when the first step in the construction phase starts. For example, the pouring of foundations or sinking of pilings for a building.

Note 1: Capital works begun after 15 September 1987 are taken to have begun before 16 September 1987 in certain circumstances. See section 43-220.

Note 2: The time when capital works begin is relevant for determining whether the capital works qualify for deduction, the use to which

---

\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

those works must be put, the rate of deduction and the calculation mechanism used. However, the time when capital works begin does not limit what qualifies as construction expenditure.

#### **43-85 Pools of construction expenditure**

- (1) A *pool of construction expenditure* is so much of the \*construction expenditure incurred by an entity on capital works as is attributable to the \*construction expenditure area.
- (2) In applying subsection (1) in a case to which subsection 43-75(3) (dealing with purchases from speculative builders) applies, assume that the expenditure incurred by the other entity was capital expenditure, but that the limitations in subsection 43-70(2) (which sets out types of expenditure that are not \*construction expenditure) still apply to the other entity's expenditure.

Note: The builder's profit margin does not form part of the construction expenditure of the purchaser.

---

\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

---

**Part 2-10** Capital allowances: rules about deductibility of capital expenditure

**Division 43** Deductions for capital works

**Subdivision 43-B** Establishing the deduction base

Section 43-90

---

**43-90 Table of intended use at time of completion of construction**

<b>Column 1 Date capital works begin</b>	<b>Column 2 Type of capital works</b>	<b>Column 3 Intended use on completion</b>
Time period 1: 22/8/79 to 19/7/82 (inclusive)	Hotel building	For use by any entity wholly or mainly to operate a hotel, motel or guest house that has at least 10 bedrooms that are for use wholly or mainly to provide short-term accommodation for travellers.
	Apartment building	The building consisted of: (a) at least 10 apartments, units or flats each of which was for use wholly or mainly to provide short-term accommodation for travellers; or (b) at least 10 apartments, units or flats each of which was for use for that purpose and facilities that are wholly or mainly for use in association with providing short-term accommodation for travellers in those apartments, units or flats.

---

\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

---

<b>Column 1</b> <b>Date capital works begin</b>	<b>Column 2</b> <b>Type of capital works</b>	<b>Column 3</b> <b>Intended use on completion</b>
Time period 2: 20/7/82 to 17/7/85 (inclusive)	Hotel building	As for time period 1.
	Apartment building	As for time period 1.
	Non-residential building	For: (a) use by the entity that incurred the expenditure for the *purpose of producing assessable income or exempt income; or (b) disposal by that entity to another entity for use by the other entity for the purpose of producing assessable income or exempt income.
Time period 3: 18/7/85 to 20/11/87 (inclusive)	Any building	For: (a) use by the entity that incurred the expenditure for the *purpose of producing assessable income or exempt income; or (b) disposal by that entity to another entity for use by the other entity for the purpose of producing assessable income or exempt income; or (c) use by an entity wholly or mainly for, or in association with, residential accommodation.

---

\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

**Part 2-10** Capital allowances: rules about deductibility of capital expenditure

**Division 43** Deductions for capital works

**Subdivision 43-B** Establishing the deduction base

Section 43-90

---

<b>Column 1</b> <b>Date capital works begin</b>	<b>Column 2</b> <b>Type of capital works</b>	<b>Column 3</b> <b>Intended use on completion</b>
Time period 4: 21/11/87 to 26/2/92 (inclusive)	Any building	For: (a) use by the entity that incurred the expenditure for the *purpose of producing assessable income or exempt income; or (b) disposal by that entity to another entity for use by the other entity for the purpose of producing assessable income or exempt income; or (c) use by an entity wholly or mainly for, or in association with, residential accommodation; or (d) use by the entity that incurred the expenditure to carry on *research and development activities by or for that entity, or for disposal by that entity to another entity for use by the other entity for carrying on research and development activities by or for the other entity.
Time period 5: 27/2/92 to 18/8/92 (inclusive)	Hotel building	As for time period 1.
	Apartment building	As for time period 1.
	Other buildings	As for any building in time period 4.
	Structural improvements	As for any building in time period 4.

---

\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

---

Section 43-95

<b>Column 1</b> <b>Date capital works begin</b>	<b>Column 2</b> <b>Type of capital works</b>	<b>Column 3</b> <b>Intended use on completion</b>
Time period 6: 19/8/92 to 30/6/97 (inclusive)	Hotel building	As for time period 1.
	Apartment building	As for time period 1.
	Other buildings	As for any building in time period 4.
	Structural improvements	As for any building in time period 4.
	Environment protection earthworks	As for any building in time period 4.

Note: There are special rules that explain or qualify the uses described in Column 3 of this Table. These rules are set out in Subdivision 43-E (sections 43-155 to 43-195). For example:

- Research and development activities must be carried on in connection with a business carried on for the purpose of producing assessable income, see section 43-195.
- Certain facilities that are not commonly provided in a hotel, motel or guest house in Australia are taken not to be used or for use to operate a hotel, motel or guest house, see subsection 43-180(6).

#### **43-95 Meaning of *hotel building* and *apartment building***

(1) A ***hotel building*** is:

- a building begun after 21 August 1979 and before 18 July 1985, or after 26 February 1992 and before 1 July 1997, that, at the time of completion of its construction, was intended to be used in the way referred to in Column 3 of Table 43-90 (intended use at completion) for a hotel building; or
- a building begun after 30 June 1997 and that, in the income year, is used in the way referred to in Column 3 (time period

\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Section 43-100

---

2) of Table 43-145 (use in the 4% manner) for a hotel building.

(2) An ***apartment building*** is:

- (a) a building begun after 21 August 1979 and before 18 July 1985, or after 26 February 1992 and before 1 July 1997, that, at the time of completion of its construction, was intended to be used in the way referred to in Column 3 of Table 43-90 for an apartment building; or
- (b) a building begun after 30 June 1997 and that, in the income year, is used in the way referred to in Column 3 (time period 2) of Table 43-145 for an apartment building.

**43-100 Certificates by Industry Research and Development Board**

A certificate by the Industry Research and Development Board established under the *Industry Research and Development Act 1986* stating that activities carried on by or for an entity were or were not \*research and development activities is conclusive for the purposes of this Division.

**Subdivision 43-C—Your area and your construction expenditure**

**Guide to Subdivision 43-C**

**43-105 What this Subdivision is about**

This Subdivision explains <b><i>your area</i></b> and <b><i>your construction expenditure</i></b> .
-----------------------------------------------------------------------------------------------------

---

\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

---

## Table of sections

43-110 Explanatory material

### Operative provisions

43-115 Your area and your construction expenditure—owners

43-120 Your area and your construction expenditure—lessees and quasi-ownership right holders

43-125 Lessees' or right holders' pools can revert to owner

43-130 Identifying your area on acquisition or disposal

## 43-110 Explanatory material

You can only get a deduction under this Division for an income year if you own, lease or hold part of a \*construction expenditure area of capital works. The area you own, lease or hold is called ***your area***.

In working out your deductions, you must identify \*your area for each \*construction expenditure area of the capital works.

\*Your area may comprise the whole of the \*construction expenditure area or part of it.

## Operative provisions

### 43-115 Your area and your construction expenditure—owners

- (1) ***Your area*** is the part of the \*construction expenditure area that you own.
- (2) ***Your construction expenditure*** is the portion of the \*pool of construction expenditure that is attributable to your area.

---

\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

---

Section 43-120

---

**43-120 Your area and your construction expenditure—lessees and quasi-ownership right holders**

*Own expenditure*

- (1) **Your area** is the part of the \*construction expenditure area that you lease, or hold under a \*quasi-ownership right over land granted by an \*exempt Australian government agency or an \*exempt foreign government agency, and that:
  - (a) is attributable to a \*pool of construction expenditure that you incurred; and
  - (b) you have continuously leased or held since the construction was completed.

*Earlier lessees' or holders' expenditure*

- (2) **Your area** is the part of the \*construction expenditure area that you lease, or hold under a \*quasi-ownership right over land granted by an \*exempt Australian government agency or an \*exempt foreign government agency, and that:
  - (a) is attributable to a \*pool of construction expenditure incurred by another lessee or holder of a quasi-ownership right over land; and
  - (b) has been continuously leased or held since the construction was completed by the lessee or holder who incurred the expenditure or an assignee of that lessee's lease or that holder's quasi-ownership right over land.
- (3) **Your construction expenditure** is the portion of the \*pool of construction expenditure that is attributable to your area.

---

\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

#### **43-125 Lessees' or right holders' pools can revert to owner**

- (1) An amount that relates to a \*pool of construction expenditure that arises as a result of expenditure incurred by a lessee or a holder of a \*quasi-ownership right over land:
  - (a) can only be deducted by a lessee or a holder of a quasi-ownership right over land who satisfies subsection 43-120(1) or (2); and
  - (b) cannot be deducted by the owner of the capital works while there is a lessee or a holder of a quasi-ownership right over land who satisfies that subsection.
- (2) The owner of the capital works may deduct an amount that relates to that pool if there is no longer a lessee or a holder of a \*quasi-ownership right over land who satisfies subsection 43-120(1) or (2).

#### **43-130 Identifying your area on acquisition or disposal**

There will be a separate \*your area at each time in an income year when you:

- (a) acquire an additional part of a \*construction expenditure area; or
- (b) dispose of some but not all of a construction expenditure area.

**Example:** You own half of a building (part A) throughout the income year, and you acquire the other half (part B) on 1 January. This section ensures that part A is your area for the entire year and that part B is your area for the second 6 months of the year.

**Note:** This ensures that the same area is not counted twice in calculating your deduction. You will have to make separate deduction calculations if you have identified more than one area as your area of the capital works.

---

\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Section 43-135

---

**Subdivision 43-D—Deductible uses of capital works**

**Guide to Subdivision 43-D**

**43-135 What this Subdivision is about**

You can only get a deduction under this Division if you use your area in a way described in Table 43-140 or 43-145 of this Subdivision.

**Table of sections**

**Operative provisions**

43-140	Using your area in a deductible way
43-145	Using your area in the 4% manner
43-150	Meaning of <i>industrial activities</i>

**Operative provisions**

**43-140 Using your area in a deductible way**

The following table sets out the way you must use \*your area in an income year for a deduction to be allowed under section 43-10 (the main deduction provision). The relevant use depends on the time when the capital works began (Column 1) and the type of capital works (Column 2). Column 3 sets out the use.

---

\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

---

**Table 43-140—Current year use**

<b>Column 1</b> <b>Date capital</b> <b>works begin</b>	<b>Column 2</b> <b>Type of capital</b> <b>works</b>	<b>Column 3</b> <b>Use of your area at some time in the</b> <b>income year</b>
Time period 1: After 30/6/97	Any capital works	You use *your area for the purpose of: (a) producing assessable income; or (b) carrying on *research and development activities.
Time period 2: 27/2/92 to 30/6/97 (inclusive)	*Hotel building	You use *your area for the *purpose of producing assessable income.
	*Apartment building	You use *your area for the *purpose of producing assessable income.
	Other capital works	You use *your area for the purpose of: (a) producing assessable income; or (b) carrying on *research and development activities.

---

\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

---

**Part 2-10** Capital allowances: rules about deductibility of capital expenditure

**Division 43** Deductions for capital works

**Subdivision 43-D** Deductible uses of capital works

Section 43-140

---

<b>Column 1</b> <b>Date capital works begin</b>	<b>Column 2</b> <b>Type of capital works</b>	<b>Column 3</b> <b>Use of your area at some time in the income year</b>
Time period 3: Before 27/2/92	*Hotel building	You use *your area for the *purpose of producing assessable income and: (a) all or part of that area is used by any entity wholly or mainly to operate a hotel, motel or guest house; and (b) that hotel, motel or guest house has at least 10 bedrooms that are used or available for use wholly to provide short-term accommodation for travellers.
	*Apartment building	You use *your area for the *purpose of producing assessable income and: (a) that area is, is part of or contains an apartment, unit or flat that is used or available for use by any entity wholly to provide short-term accommodation for travellers, and you own or lease at least 9 other apartments, units or flats in the building that are used or available for use by any entity wholly to provide short-term accommodation for travellers; or (b) that area is, is part of or contains a facility that is used or available for use by any entity wholly or mainly in association with providing short-term accommodation for travellers in apartments, units or flats in the building that are used in the way described in paragraph (a).
<b>Column 1</b> <b>Date capital works begin</b>	<b>Column 2</b> <b>Type of capital works</b>	<b>Column 3</b> <b>Use of your area at some time in the income year</b>

---

\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

---

Section 43-140

	Other capital works	You use *your area for the purpose of: (a) producing assessable income; or (b) carrying on *research and development activities.
--	---------------------	----------------------------------------------------------------------------------------------------------------------------------------

Note: There are special rules that explain or qualify the uses described in Column 3 of this Table. These rules are set out in Subdivision 43-E (sections 43-155 to 43-195). For example:

- Your area is taken to be used, for use or available for use for a purpose or in a way if it is maintained ready for use for that purpose or in that way. See section 43-160.
- Research and development activities must be carried on in connection with a business carried on for the purpose of producing assessable income, see section 43-195.

---

\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

---

Section 43-145

---

**43-145 Using your area in the 4% manner**

You use a part of \*your area in the **4% manner** if you use it as described in the following Table. The relevant use depends on the time when the capital works began (Column 1) and the type of capital works (Column 2). Column 3 sets out the use.

**Table 43-145—Use in the 4% manner**

<b>Column 1</b> <b>Date capital works begin</b>	<b>Column 2</b> <b>Type of capital works</b>	<b>Column 3</b> <b>Use of a part of *your area at some time in the income year</b>
Time period 1: After 30/6/97	Capital works that are buildings	You use the part of *your area for the *purpose of producing assessable income and: (a) that part is used by any entity wholly or mainly to operate a hotel, motel or guest house; and (b) that hotel, motel or guest house has at least 10 bedrooms that are used or available for use wholly to provide short-term accommodation for travellers.

---

\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

---

<b>Column 1</b> <b>Date capital</b> <b>works begin</b>	<b>Column 2</b> <b>Type of capital</b> <b>works</b>	<b>Column 3</b> <b>Use of a part of *your area at some time</b> <b>in the income year</b>
		<p>You use the part of *your area for the *purpose of producing assessable income and:</p> <p>(a) that part is, is part of or contains an apartment, unit or flat that is used or available for use by any entity wholly to provide short-term accommodation for travellers, and you own or lease at least 9 other apartments, units or flats in the building that are used or available for use by any entity wholly to provide short-term accommodation for travellers; or</p> <p>(b) that part is, is part of or contains a facility that is used or available for use by any entity wholly or mainly in association with providing short-term accommodation for travellers in apartments, units or flats in the building that are used in the way described in paragraph (a).</p>

---

\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

---

**Part 2-10** Capital allowances: rules about deductibility of capital expenditure

**Division 43** Deductions for capital works

**Subdivision 43-D** Deductible uses of capital works

Section 43-145

---

<b>Column 1</b> <b>Date capital</b> <b>works begin</b>	<b>Column 2</b> <b>Type of capital</b> <b>works</b>	<b>Column 3</b> <b>Use of a part of *your area at some time</b> <b>in the income year</b>
		<p>You use the part of *your area for the *purpose of producing assessable income, and that part is used by any entity:</p> <p>(a) wholly or mainly for *industrial activities; or</p> <p>(b) to provide meal rooms, rest rooms, first aid rooms, change rooms or similar facilities that are wholly or mainly for use by:</p> <p style="padding-left: 40px;">(i) workers employed wholly or mainly to undertake the work directly involved in carrying out industrial activities; or</p> <p style="padding-left: 40px;">(ii) the immediate supervisors of those workers; or</p> <p>(c) wholly or mainly as office accommodation for the immediate supervisors of those workers.</p>

---

\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

---

<b>Column 1</b> <b>Date capital works begin</b>	<b>Column 2</b> <b>Type of capital works</b>	<b>Column 3</b> <b>Use of a part of *your area at some time in the income year</b>
Time period 2: 27/2/92 to 30/6/97 (inclusive)	*Hotel building	You use the part of *your area for the *purpose of producing assessable income and: (a) that part is used by any entity wholly or mainly to operate a hotel, motel or guest house; and (b) that hotel, motel or guest house has at least 10 bedrooms that are used or available for use wholly to provide short-term accommodation for travellers.
	*Apartment building	You use the part of *your area for the *purpose of producing assessable income and: (a) that part is, is part of or contains an apartment, unit or flat that is used or available for use by any entity wholly to provide short-term accommodation for travellers, and you own or lease at least 9 other apartments, units or flats in the building that are used or available for use by any entity wholly to provide short-term accommodation for travellers; or (b) that part is, is part of or contains a facility that is used or available for use by any entity wholly or mainly in association with providing short-term accommodation for travellers in apartments, units or flats in the building that are used in the way described in paragraph (a).

\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

**Part 2-10** Capital allowances: rules about deductibility of capital expenditure

**Division 43** Deductions for capital works

**Subdivision 43-D** Deductible uses of capital works

Section 43-150

---

Column 1 Date capital works begin	Column 2 Type of capital works	Column 3 Use of a part of *your area at some time in the income year
	Other buildings	You use the part of *your area for the *purpose of producing assessable income, and that part is used by any entity: (a) wholly or mainly for *industrial activities; or (b) to provide meal rooms, rest rooms, first aid rooms, change rooms or similar facilities that are wholly or mainly for use by: (i) workers employed wholly or mainly to undertake the work directly involved in carrying out industrial activities; or (ii) the immediate supervisors of those workers; or (c) wholly or mainly as office accommodation for the immediate supervisors of those workers.

Note: There are special rules that explain or qualify the uses described in Column 3 of this Table. These rules are set out in Subdivision 43-E (sections 43-155 to 43-195). For example:

- Your area is taken to be used, for use or available for use for a purpose or in a way if it is maintained ready for use for that purpose or in that way. See section 43-160.
- A suite of rooms in a hotel building may be treated as one bedroom, see subsection 43-180(2).

**43-150** Meaning of *industrial activities*

*Industrial activities* means:

- (a) any of the following activities (*core activities*):
- (i) operations where manufactured items are derived from other goods even if those manufactured items are

---

\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

---

themselves used as parts or materials in the manufacture of other items;

- (ii) operations (other than packing, placing in containers or labelling) by which manufactured items are brought into or maintained in the form or condition in which they are sold or used, even if they are for sale or use as parts or materials in the manufacture of other items;
- (iii) the separation of a metal or a compound of a metal from its ore (not including crushing, grinding, breaking, screening or sizing to facilitate that separation) or the treatment or processing of a metal or a compound of a metal after its separation;
- (iv) for a metal or a compound of a metal not requiring separation—applying to the metal or compound a treatment or process which, if the metal or compound had required separation, would not have been applied until after the separation;
- (v) refining petroleum;
- (vi) scouring or carbonising wool;
- (vii) milling timber;
- (viii) freezing primary products;
- (ix) printing, lithographing or engraving, or a similar process, in the course of carrying on a business as a publisher, printer, lithographer or engraver;
- (x) curing meat or fish;
- (xi) producing chilled or frozen meat;
- (xii) pasteurising milk;
- (xiii) canning or bottling foodstuffs;
- (xiv) producing electric current, hydraulic power, steam, compressed air or gases (other than natural gas) for the purpose of sale, or use wholly or mainly in carrying on another activity mentioned in this paragraph; or

---

\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Section 43-155

---

(b) any of the following activities:

- (i) the packing, placing in containers or labelling of any goods resulting from the carrying on of core activities;
- (ii) the disposal of waste substances resulting from the carrying on of core activities;
- (iii) the cleansing or sterilising of bottles, vats or other containers used by the entity to store goods to be used in carrying on core activities or goods resulting from the carrying on of core activities;
- (iv) the assembly, maintenance, cleansing, sterilising or repair of property used in carrying on core activities;
- (v) the storage, within premises in which core activities are carried on, or premises contiguous to those premises, of goods in carrying on core activities, goods in relation to which core activities have commenced but not finally been completed or goods resulting from core activities;

but does not include the preparation of food or drink (whether for consumption on the premises where it is prepared or elsewhere) in, or in premises occupied in connection with, a hotel, motel, boarding house, catering establishment, restaurant, cafe, milk-bar, coffee shop, retail shop or similar establishment.

**Subdivision 43-E—Special rules about uses**

**Guide to Subdivision 43-E**

**43-155 What this Subdivision is about**

This Subdivision contains special rules about uses of capital works. It is relevant to whether you can get a deduction for capital works and also to the rate of that deduction. The rules in this Subdivision affect the uses of capital works described in Tables 43-90, 43-140 and 43-145.

---

\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

## Table of sections

### Operative provisions

43-160	Your area is used for a purpose if it is maintained ready for use for the purpose
43-165	Temporary cessation of use
43-170	Own use—capital works other than hotel and apartment buildings
43-175	Own use—hotel and apartment buildings
43-180	Special rules for hotel and apartment buildings
43-185	Residential or display use
43-190	Use of facilities not commonly provided, and of certain buildings used to operate a hotel, motel or guest house
43-195	Use for research and development activities must be in connection with a business

## Operative provisions

### 43-160 Your area is used for a purpose if it is maintained ready for use for the purpose

A part of \*your area is taken to be used, for use or available for use for a particular purpose or in a particular manner at a time if, at that time:

- (a) it was maintained ready for use for that purpose or in that manner; and
- (b) it was not used or for use for any other purpose or in any other manner; and
- (c) its use or intended use for that purpose or in that manner had not been abandoned.

Note 1: Construction must be complete before you can deduct an amount, see section 43-30.

Note 2: This section affects Tables 43-140 and 43-145.

---

\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

---

Section 43-165

---

**43-165 Temporary cessation of use**

A part of \*your area is taken to be used, for use or available for use for a particular purpose or in a particular manner if its use for that purpose or in that manner temporarily ceases because of:

- (a) the construction of an extension, alteration or improvement, or the making of repairs; or
- (b) seasonal or climatic factors.

Note: This section affects Tables 43-140 and 43-145.

**43-170 Own use—capital works other than hotel and apartment buildings**

- (1) A part of capital works, other than a \*hotel building or an \*apartment building, is taken not to be used for the \*purpose of producing assessable income if that part is for use mainly for, or in association with, residential accommodation by you or an \*associate.

Note: This subsection affects Tables 43-140 and 43-145.

- (2) Subsection (1) does not apply to use by an \*associate under an \*arrangement:
  - (a) to which you and the associate are parties; and
  - (b) that is of a kind that the parties could reasonably be expected to have entered into if they had been dealing with each other at arm's length; and
  - (c) that was not entered into for the purpose of obtaining a deduction under this Division.
- (3) If property that constitutes the whole or part of capital works, other than a \*hotel building or an \*apartment building, is part of an individual's home, the property is taken to be used, or for use, wholly or mainly for or in association with residential accommodation.

---

\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

---

Note: This subsection affects Tables 43-90 and 43-140.

#### **43-175 Own use—hotel and apartment buildings**

- (1) An entity is taken not to have used a bedroom in a \*hotel building, or an apartment, unit or flat in an \*apartment building, for the \*purpose of producing assessable income at a time if, at that time, the bedroom, apartment, unit or flat is used, or reserved for use, by:
- (a) the entity; or
  - (b) if the entity is a partnership—any of the partners in the partnership.

Note: This subsection affects Tables 43-140 and 43-145.

- (2) Also, an entity is taken not to use a bedroom in a \*hotel building, or an apartment, unit or flat in an \*apartment building for any purpose at a time if:
- (a) at that time, a right to use or occupy the bedroom, apartment, unit or flat was vested in the entity; and
  - (b) that right was vested in the entity because the entity was, at that time, a member of a company, a beneficiary of a trust estate or a partner in a partnership.

Note: This subsection affects Tables 43-90, 43-140 and 43-145.

#### **43-180 Special rules for hotel and apartment buildings**

*Rules about counting rooms or apartments etc.*

- (1) A bedroom in a \*hotel building, or an apartment, unit or flat in an \*apartment building, is taken to be used or available for use wholly for short-term accommodation for travellers in a period if it is used or available for use mainly for short-term accommodation for travellers in that period.

Note: This subsection ensures that a limited period of non-short-term traveller accommodation use will be disregarded in counting the

---

\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

**Part 2-10** Capital allowances: rules about deductibility of capital expenditure

**Division 43** Deductions for capital works

**Subdivision 43-E** Special rules about uses

Section 43-180

---

number of rooms provided the bedroom, apartment, unit or flat is used mainly for short-term traveller accommodation.

- (2) For the purpose of counting the number of bedrooms in a \*hotel building, if 2 or more rooms that are bedrooms or include a bedroom are for use together as a suite of rooms, the suite is taken to constitute one bedroom.
- (3) Despite subsection 43-50(3) (which treats you as not being the owner of certain capital works), you can still count an apartment, unit or flat that you are taken to have disposed of under section 160ZSA of the *Income Tax Assessment Act 1936* in working out whether you own or lease at least 10 apartments, units or flats in an \*apartment building if you own or lease at least one other apartment, unit or flat in the building.

Note 1: Section 160ZSA allows holders of estates in fee simple and lessees of land who have certain leases or subleases with terms exceeding 50 years to elect to treat the grant of the lease or sublease as the disposal of an asset for the purposes of the capital gains and losses provisions.

Note 2: Subsection 43-50(3) treats you as not being the owner of capital works that are the subject of such a lease.

*Rules about hotel or apartment complexes*

- (4) A group of buildings that constitutes a complex of buildings is taken to be one \*hotel building or \*apartment building, and none of the buildings in the group is taken to be a separate building.
- (5) The construction of a \*hotel building or \*apartment building is taken to be an extension of another building if, after completion of the construction, those buildings are taken to be one building under subsection (4).

Note: Subsections (4) and (5) ensure that a hotel or apartment building that provides short-term traveller accommodation in detached buildings will be treated as a single building so that the 10 hotel room/apartment test is applied to the complex as a whole. It also has the effect that the complex as a whole must be completed before there can be a construction expenditure area.

---

\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

*Rules about facilities not commonly provided in Australia*

- (6) If a \*hotel building contains a facility of a kind that is not commonly provided in a hotel, motel or guest house in Australia, the facility is taken not to be used or for use to operate a hotel, motel or guest house.
- (7) If an \*apartment building contains a facility of a kind that is not commonly provided in a hotel, motel or guest house in Australia, the facility is taken not to be a facility for use in association with providing short-term accommodation for travellers in apartments, units or flats.

Note: Subsections (6) and (7) exclude areas such as casinos from the construction expenditure area of a hotel building or apartment building.

**43-185 Residential or display use**

- (1) A building, other than a \*hotel building or an \*apartment building, or an extension, alteration or improvement to such a building, begun after 19 July 1982 and before 18 July 1985 is taken not to be used for the \*purpose of producing assessable income or exempt income if it is used or for use wholly or mainly for exhibition or display in connection with:
  - (a) the sale of all or part of any building; or
  - (b) the lease of all or part of any building for use wholly or mainly for or in association with residential accommodation.

Note: Subsection (1) affects time period 2 in Table 43-90 and time period 3 in Table 43-140.

- (2) A building, other than a \*hotel building or an \*apartment building, begun after 19 July 1982 and before 18 July 1985 is taken not to be used for the \*purpose of producing assessable income if it is used or available for use wholly or mainly for or in association with residential accommodation.

---

\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

**Part 2-10** Capital allowances: rules about deductibility of capital expenditure

**Division 43** Deductions for capital works

**Subdivision 43-E** Special rules about uses

**Section 43-190**

---

Note: Subsection (2) affects time period 2 in Table 43-90 and time period 3 in Table 43-140.

- (3) A building, other than a \*hotel building or an \*apartment building, begun after 17 July 1985 and before 1 July 1997 is taken not to be used for the \*purpose of producing assessable income if it is used or for use wholly or mainly for exhibition or display in connection with the sale of all or part of any building.

Note: Subsection (3) affects time periods 2 and 3 in Table 43-140.

**43-190 Use of facilities not commonly provided, and of certain buildings used to operate a hotel, motel or guest house**

- (1) A facility in a \*hotel building or an \*apartment building that is not commonly provided in a hotel, motel or guest house in Australia is taken not to be used, or for use, for or in association with residential accommodation if the facility is part of a building begun after 19 July 1982 and before 18 July 1985.

Note: This subsection means that, for time period 2 in Table 43-90, a facility referred to in subsection 43-180(6) or (7) (dealing with facilities not commonly provided in Australia) is taken to be a non-residential building if it satisfies the use test in Column 3 of that table for a building of that kind, and is therefore eligible for deduction even though it would ordinarily be taken to be used for residential accommodation.

- (2) A building, other than a \*hotel building or an \*apartment building, begun after 19 July 1982 and before 18 July 1985 that is used, or for use, wholly or mainly for the purpose of operating a hotel, motel or guest house is taken to be used or for use wholly or mainly for, or in association with, residential accommodation.

Note: This subsection ensures that hotels, motels and guest houses begun in the specified time period that do not satisfy the tests for hotel and apartment buildings (for example, because they had fewer than 10 bedrooms or apartments) do not qualify for a deduction under this Division.

---

\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

### **43-195 Use for research and development activities must be in connection with a business**

You are taken not to use capital works for \*research and development activities unless you do so in connection with a business that you carry on for the \*purpose of producing assessable income.

Note: This section affects Tables 43-90 and 43-140.

## **Subdivision 43-F—Calculation of deduction**

### **Guide to Subdivision 43-F**

#### **43-200 What this Subdivision is about**

This Subdivision shows you how to calculate the amount of a deduction under section 43-10. The calculations must be made separately for each area that is identified as your area.

There are 2 separate calculation provisions: One for capital works begun before 27 February 1992; and the other for capital works begun after 26 February 1992.

#### **Table of sections**

43-205 Explanatory material

##### **Operative provisions**

43-210 Deduction for capital works begun after 26 February 1992

43-215 Deduction for capital works begun before 27 February 1992

43-220 Capital works taken to have begun earlier for certain purposes

---

\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

---

Section 43-205

---

**43-205 Explanatory material**

*Capital works begun before 27 February 1992*

The calculation for these works is based on \*your construction expenditure and the applicable rate of deduction. There can be only one rate of deduction that applies to \*your area. However, reductions of deductions may apply.

You must reduce your deduction for any period in the income year that you did not own \*your area and use it in the way described in Table 43-140 (Current year use). Because there are 2 use tests in Table 43-140 for \*hotel buildings and \*apartment buildings (a general income producing test and a more specific hotel and short-term traveller accommodation use test), there are 2 reduction steps.

The first step reduces your deduction if part of \*your area was not used as a \*hotel building or \*apartment building. The second step reduces the deduction to the extent that your area is used only partly for the \*purpose of producing assessable income. This occurs, for example, if you \*derive both assessable and exempt income, or if part of your area is not used to produce assessable income for all or part of the period it was used as a hotel building or apartment building.

*Capital works begun after 26 February 1992*

The calculation for these works is based on a portion of \*your construction expenditure and the applicable rate of deduction. There can be 2 rates of deduction for your area depending on the way you use it.

If 2 rates apply, there will be a separate calculation for the part of \*your area used in the way described in Table 43-140 and for the part of \*your area used in the way described in Table 43-145 (Use

---

\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

in the 4% manner). A gross deduction and subsequent reduction is calculated for each.

The reduction is the same as the second reduction for capital works begun before 27 February 1992.

## Operative provisions

### 43-210 Deduction for capital works begun after 26 February 1992

**Step 1** Calculate the amount worked out using the formula:

$$\frac{\text{portion of your CE} \times \text{days used} \times 0.04}{365}$$

where:

**portion of your CE** is the portion of \*your construction expenditure that is attributable to the part of \*your area that you used in the \*4% manner.

**days used** is the number of days in the income year that:

- (a) you owned or were the lessee of that part of \*your area and used it in the \*4% manner; or
- (b) you were the holder of that part of \*your area under a \*quasi-ownership right over land granted by an \*exempt Australian government agency or an \*exempt foreign government agency, and used that part of your area in the 4% manner.

**Step 2** Reduce the Step 1 amount by the extent to which the part referred to in Step 1 was used only partly for the \*purpose of producing assessable income.

Note: This Step applies if:

- part of your income from the part referred to in Step 1 is exempt income; or

---

\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

**Part 2-10** Capital allowances: rules about deductibility of capital expenditure

**Division 43** Deductions for capital works

**Subdivision 43-F** Calculation of deduction

Section 43-210

---

- part of the part referred to in Step 1 was not used for the purpose of producing assessable income or was not available for that use; or
- the part of the part referred to in Step 1 was not used for such a purpose during a part of the *days used* period.

**Step 3** Calculate the amount worked out using the formula:

$$\frac{\text{portion of your CE} \times \text{days used} \times 0.025}{365}$$

where:

**portion of your CE** is the portion of \*your construction expenditure that is attributable to the part of \*your area that you did not use in the \*4% manner but was used as described in Table 43-140 (Current year use).

**days used** is the number of days in the income year that:

- (a) you owned or were the lessee of that part of \*your area and used it in that manner; or
- (b) you were the holder of that part of \*your area under a \*quasi-ownership right over land granted by an \*exempt Australian government agency or an \*exempt foreign government agency, and used that part of your area in that manner.

**Step 4** Reduce the Step 3 amount by the extent to which the part referred to in Step 3:

- (a) for a \*hotel building or \*apartment building—was used only partly for the \*purpose of producing assessable income; or
- (b) for any other capital works—was used only partly for the purpose of \*producing assessable income or carrying on \*research and development activities.

Note: This Step applies if:

---

\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

---

- part of your income from the part referred to in Step 3 is exempt income; or
- part of the part referred to in Step 3 was not used for the purpose of producing assessable income (or research and development activities) or was not available for that use; or
- the part of the part referred to in Step 3 was not used for such a purpose during a part of the *days used* period.

**Step 5** Add the Step 2 and Step 4 amounts.

**Step 6** The amount of your allowable deduction is the lesser of your Step 5 amount or the \*undeducted construction expenditure for \*your area.

#### **43-215 Deduction for capital works begun before 27 February 1992**

**Step 1** Calculate the amount worked out using the formula:

$$\frac{\text{your CE} \times \text{days used} \times \text{applicable rate}}{365}$$

where:

*your CE* is \*your construction expenditure.

*days used* is the number of days in the income year that you owned or were the lessee of \*your area and used it in the way that applies to the capital works under Table 43-140 (Current year use).

*applicable rate* is:

- (a) 0.04 if the capital works began after 21 August 1984 and before 16 September 1987; or
- (b) 0.025 in any other case.

Note: For the purpose of working out the applicable rate, capital works begun after 15 September 1987 are taken to have begun before 16 September 1987 in certain circumstances. See section 43-220.

---

\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

---

Section 43-220

---

**Step 2** This step applies only to \*hotel buildings and \*apartment buildings. Reduce the Step 1 amount by the extent to which:

- (a) for a hotel building—any part of \*your area was not used wholly or mainly to operate a hotel, motel or guest house; or
- (b) for an apartment building—any part of \*your area was not used wholly for or in association with providing short-term accommodation for travellers.

**Step 3** Reduce the Step 1 or 2 amount by the extent to which:

- (a) for a \*hotel building or \*apartment building—\*your area was used only partly for the \*purpose of producing assessable income; or
- (b) for any other capital works—\*your area was used only partly for the \*purpose of producing assessable income or carrying on \*research and development activities.

Note: This Step applies if:

- part of your income from the capital works is exempt income; or
- part of the capital works were not used for the purpose of producing assessable income or were not available for that use; or
- the capital works were not used for such a purpose during a part of the *days used* period.

**Step 4** The amount of your allowable deduction is the lesser of your Step 3 amount or the \*undeducted construction expenditure for \*your area.

**43-220 Capital works taken to have begun earlier for certain purposes**

- (1) A building, other than a \*hotel building or an \*apartment building, or an extension, alteration or improvement to such a building, begun after 15 September 1987 is taken to have begun before 16 September 1987 if:

---

\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

- (a) the construction was under a contract that was entered into before 16 September 1987, or was under 2 or more contracts any of which was entered into before that date; or
  - (b) money was borrowed for a purpose that included the purpose of financing the construction under a contract or contracts entered into before 16 September 1987 by an entity that was, or by entities each of which was, a *\*qualifying investor*, and that money was used to finance the construction.
- (2) An entity is a *qualifying investor* for the construction of a building if:
  - (a) at the end of 15 September 1987, the entity was the owner or lessee of the land on which the building was constructed; or
  - (b) the entity became the owner or lessee of the land under a contract entered into before 16 September 1987.
- (3) An entity is a *qualifying investor* for the construction of an extension, alteration or improvement to a building if:
  - (a) at the end of 15 September 1987, the entity was the owner or lessee of the building, or the part of the building to which the extension, alteration or improvement was made; or
  - (b) the entity became the owner or lessee of the building or that part under a contract entered into before 16 September 1987.

## **Subdivision 43-G—Undeducted construction expenditure**

### **Guide to Subdivision 43-G**

#### **43-225 What this Subdivision is about**

The undeducted construction expenditure for your area is the part of your construction expenditure you have left to write off. It is used to work out:

---

*\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.*

## Section 43-230

---

- the number of years in which you can deduct amounts for your construction expenditure; and
- the amount that you can deduct under section 43-40 if your area or a part is destroyed.

### Table of sections

#### Operative provisions

43-230	Calculating undeducted construction expenditure—common step
43-235	Post-26 February 1992 undeducted construction expenditure
43-240	Pre-27 February 1992 undeducted construction expenditure

### Operative provisions

#### 43-230 Calculating undeducted construction expenditure—common step

- (1) Identify the date when the capital works began.

Note 1: The date determines whether your calculation is to be made under section 43-235 (for post-26/2/92 expenditure) or 43-240 (for pre-27/2/92 expenditure).

Note 2: Section 43-80 explains when capital works begin.

- (2) If you are calculating a deduction under Subdivision 43-F, identify the period (*use period*) that:

- (a) started when \*your area, or a part of it, was first used by any entity for any purpose after completion of the relevant construction; and
- (b) ended at the end of the preceding income year or, if you acquired your area during the income year, at the end of the day before the time of the acquisition.

---

\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

---

- (3) If you are calculating a deduction under Subdivision 43-H, identify the period (*use period*) that started at the time described in paragraph (2)(a) and ended at the time of the destruction.

#### **43-235 Post-26 February 1992 undeducted construction expenditure**

**Step 1** Calculate for each day in the use period the amount worked out using the formula:

$$\frac{\text{portion of your CE}}{365} \times 0.04$$

where:

*portion of your CE* is the portion of \*your construction expenditure that is attributable to the part of \*your area that you used in the \*4% manner.

**Step 2** Calculate for each day in the use period the amount worked out using the formula:

$$\frac{\text{portion of your CE}}{365} \times 0.025$$

where:

*portion of your CE* is the portion of \*your construction expenditure that is attributable to the part of \*your area that you did not use in the \*4% manner.

**Step 3** Add the aggregate of the amounts calculated under Steps 1 and 2.

**Step 4** Deduct the sum of those amounts from \*your construction expenditure. The result is the *undeducted construction expenditure* for \*your area.

---

\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Section 43-240

---

**43-240 Pre-27 February 1992 undeducted construction expenditure**

**Step 1** Calculate for each day in the use period the amount worked out using the formula:

$$\frac{\text{your CE} \times \text{applicable rate}}{365}$$

where:

*your CE* is \*your construction expenditure.

*applicable rate* is:

- (a) 0.04 if the capital works began after 21 August 1984 and before 16 September 1987; or
- (b) 0.025 in any other case.

Note: For the purpose of working out the applicable rate, capital works begun after 15 September 1987 are taken to have begun before 16 September 1987 in certain circumstances. See section 43-220.

**Step 2** Deduct the sum of the amounts amount calculated under Step 1 from \*your construction expenditure. The result is the *undeducted construction expenditure* for \*your area.

**Subdivision 43-H—Balancing deduction on destruction of capital works**

**Guide to Subdivision 43-H**

**43-245 What this Subdivision is about**

You may deduct an amount for the undeducted construction expenditure for your area if your area or part of it is destroyed in the circumstances described in section 43-40.

This Subdivision shows you how to work out that deduction.

---

\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

The calculations in this Subdivision are made separately for each part of the capital works that is identified as your area.

## Table of sections

### Operative provisions

43-250	The amount of the balancing deduction
43-255	Amounts received or receivable
43-260	Apportioning amounts received for destruction

## Operative provisions

### 43-250 The amount of the balancing deduction

**Step 1** Calculate the amount (if any) by which the \*undeducted construction expenditure for the part of \*your area that was destroyed exceeds the amounts you have received or have a right to receive for the destruction of that part.

**Step 2** The Step 1 amount must be reduced if the amount you have deducted or can deduct for \*your area for any income year is calculated by applying:

- (a) Step 2 or 4 in section 43-210; or
- (b) Step 2 or 3 in section 43-215.

The reduction under this Step must be reasonable having regard to the extent of the reduction under the other Step or Steps.

**Note:** The reductions referred to in sections 43-210 and 43-215 are made where you use \*your area only partly for an appropriate purpose.

### 43-255 Amounts received or receivable

The amounts you have received or have a right to receive for the destruction of that part of \*your area include:

---

\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Section 43-260

---

- (a) an amount received under an insurance policy or otherwise for the destruction of that part; and
- (b) an amount received for disposing of property that was included in that part of your area, less any demolition expenditure incurred on the property.

**43-260 Apportioning amounts received for destruction**

If an amount received or receivable in respect of the destruction of property relates to both the part of \*your area for which you are claiming the balancing deduction and to property:

- (a) the cost of which did not form part of \*your construction expenditure; or
  - (b) that is capital works that was not part of your area;
- you must apportion the amount received or receivable to the amount that is attributable to the part of your area that was destroyed. The apportionment must be reasonable.

*[The next heading is the heading to Chapter 3.]*

---

\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

---

## **Chapter 3—Specialist liability rules**

*[The next heading is the heading to Part 3-5.]*

### **Part 3-5—Corporate taxpayers and corporate distributions**

*[The next Division is Division 165.]*

#### **Division 165—Income tax consequences of changing ownership or control of a company**

##### **Table of Subdivisions**

###### Guide to Division 165

- 165-A Deducting tax losses of earlier income years
- 165-B Working out the taxable income and tax loss for the income year of the change
- 165-D Tests for finding out whether the company has maintained the same owners
- 165-E The same business test

---

\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

---

Section 165-1

---

## **Guide to Division 165**

### **165-1 What this Division is about**

A change in the ownership or control of a company can affect:

- whether it can deduct its tax losses of earlier income years; and
- how it calculates its taxable income and tax loss for the income year of the change.

### **Subdivision 165-A—Deducting tax losses of earlier income years**

## **Guide to Subdivision 165-A**

### **165-5 What this Subdivision is about**

A company cannot deduct a tax loss unless:

- it has the same owners and the same control throughout the loss year and the income year; or
- it carried on the same business, entered no new transactions and conducted no additional business.

## **Table of sections**

### **Operative provisions**

165-10	To deduct a tax loss
165-12	Company must maintain the same owners
165-13	Alternatively, company must carry on same business

---

\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

---

- 165-15 Same people must control the voting power, or company must carry on same business
- 165-20 When company can deduct *part* of a tax loss

## Operative provisions

### 165-10 To deduct a tax loss

A company cannot deduct a \*tax loss unless either:

- (a) it meets the conditions in section 165-12 (which is about the company maintaining the same owners); or
- (b) it meets the conditions in section 165-13 (which is about the company carrying on the same business).

Note: In the case of a listed public company or its 100% subsidiary, Subdivision 166-A modifies how this Subdivision applies, unless the company chooses otherwise.

### 165-12 Company must maintain the same owners

#### *Voting power*

- (1) There must be persons who had \*more than 50% of the voting power in the company during the whole of the \*loss year. Also, those persons must have had \*more than 50% of the voting power in the company during the whole of the income year.

See section 165-150 to work out who had more than 50% of the voting power.

#### *Rights to dividends*

- (2) There must be persons who had rights to \*more than 50% of the company's dividends during the whole of the \*loss year. Also, those persons must have had rights to \*more than 50% of the company's dividends during the whole of the income year.

See section 165-155 to work out who had rights to more than 50% of the company's dividends.

---

\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

## Section 165-13

---

### *Rights to capital distributions*

- (3) There must be persons who had rights to \*more than 50% of the company's capital distributions during the whole of the \*loss year. Also, those persons must have had rights to \*more than 50% of the company's capital distributions during the whole of the income year.

See section 165-160 to work out who had rights to more than 50% of the company's capital distributions.

### *When to apply the primary test*

- (4) To work out whether a condition in this section was satisfied during a period (the ***ownership test period***) that is:
- (a) the \*loss year; or
  - (b) the income year;
- apply the primary test for that condition unless subsection (5) requires the alternative test to be applied.

For the primary test: see subsections 165-150(1), 165-155(1) and 165-160(1).

### *When to apply the alternative test*

- (5) Apply the alternative test for that condition if one or more other companies beneficially owned \*shares, or interests in shares, in the company at any time during the \*loss year or the income year.

For the alternative test: see subsections 165-150(2), 165-155(2) and 165-160(2).

## **165-13 Alternatively, company must carry on same business**

- (1) If the company fails to meet a condition in section 165-12 (which is about the company maintaining the same owners), it must instead meet the conditions in this section.

---

\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

---

Section 165-15

---

- (2) There must be some period (the *continuity period*) that satisfies these conditions:
  - (a) it must start at the start of the \*loss year (and end before, at or after the end of the loss year);
  - (b) if the period were the loss year, each of the conditions in section 165-12 about the loss year would be satisfied.
- (3) The company must satisfy the \*same business test for the income year (the *same business test period*). Apply the test to the \*business that the company carried on immediately before the time (the *test time*) when the continuity period ends.

For the same business test: see Subdivision 165-E.

**165-15 Same people must control the voting power, or company must carry on same business**

- (1) Even if a company meets the conditions in section 165-12 or 165-13, it cannot deduct the \*tax loss if:
  - (a) for some or all of the income year, a person controlled, or was able to control, the voting power in the company (whether directly, or indirectly through one or more interposed entities); and
  - (b) for some or all of the \*loss year, that person did *not* control, and was *not* able to control, that voting power (directly, or indirectly in that way); and
  - (c) that person began to control, or became able to control, that voting power (directly, or indirectly in that way) for the purpose of:
    - (i) getting some benefit or advantage in relation to how this Act applies; or
    - (ii) getting such a benefit or advantage for someone else; or for purposes including that purpose.

---

\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

**Part 3-5** Corporate taxpayers and corporate distributions

**Division 165** Income tax consequences of changing ownership or control of a company

**Subdivision 165-B** Working out the taxable income and tax loss for the income year of the change

Section 165-20

---

- (2) However, that person's control of the voting power, or ability to control it, does not prevent the company from deducting the \*tax loss if the company satisfies the \*same business test for the income year (the *same business test period*).
- (3) Apply the \*same business test to the \*business that the company carried on immediately before the time (the *test time*) when the person began to control that voting power, or became able to control it.

For the same business test: see Subdivision 165-E.

**165-20 When company can deduct *part* of a tax loss**

- (1) If section 165-10 (which is about deducting a tax loss) prevents a company from deducting a \*tax loss, the company can deduct the *part of the tax loss* that was incurred during a *part of the loss year*.
- (2) However, the company can do this only if, assuming that *part* of the \*loss year had been treated as the *whole* of the loss year for the purposes of section 165-10, the company would have been entitled to deduct the tax loss.

**Subdivision 165-B—Working out the taxable income and tax loss for the income year of the change**

**Guide to Subdivision 165-B**

**165-23 What this Subdivision is about**

A company that has not had the same ownership and control during the income year, and has not satisfied the same business test, works out its taxable income and tax loss under this Subdivision.
---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------

**Table of sections**

---

\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

---

## Section 165-25

---

- 165-25 Summary of this Subdivision
- 165-30 Flow chart showing the application of this Subdivision

### **When a company must work out its taxable income and tax loss under this Subdivision**

- 165-35 On a change of ownership, unless the company carries on the same business
- 165-37 Who has more than a 50% stake in the company during a period
- 165-40 On a change of control of voting power in the company, unless the company carries on the same business

### **Working out the company's taxable income**

- 165-45 First, divide the income year into periods
- 165-50 Next, calculate the notional loss or notional taxable income for each period
- 165-55 How to attribute deductions to periods
- 165-60 How to attribute assessable income to periods
- 165-65 How to calculate the company's taxable income for the income year

### **Working out the company's tax loss**

- 165-70 How to calculate the company's tax loss for the income year

### **Special rules that apply if the company is in partnership**

- 165-75 How to calculate the company's notional loss or notional taxable income for a period when the company was a partner
- 165-80 How to calculate the company's share of a partnership's notional loss or notional net income for a period if both entities have the same income year
- 165-85 How to calculate the company's share of a partnership's notional loss or notional net income for a period if the entities have different income years
- 165-90 Company's full year deductions include a share of partnership's full year deductions

## **165-25 Summary of this Subdivision**

- (1) The company calculates its taxable income for the income year in this way:

---

\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

**Part 3-5** Corporate taxpayers and corporate distributions

**Division 165** Income tax consequences of changing ownership or control of a company

**Subdivision 165-B** Working out the taxable income and tax loss for the income year of the change

Section 165-25

---

*Method statement*

*Step 1.* Divide the income year into periods: each change in ownership or control is a dividing point between periods.

*Step 2.* Treat each period as if it were an income year and work out the notional loss or notional taxable income for that period.

*Step 3.* Work out the taxable income for the year of the change by adding up:

- each notional taxable income; and
- any full year amounts (amounts of assessable income not taken into account at Step 2);

and then subtracting any full year deductions (deductions not taken into account at Step 2).

Note: Do *not* take into account any notional loss.

(2) As well as a taxable income, the company will have a \*tax loss. It is the total of:

- each notional loss; and
- excess \*full year deductions of particular kinds.

(3) Special rules apply if the company was in partnership at some time during the income year.

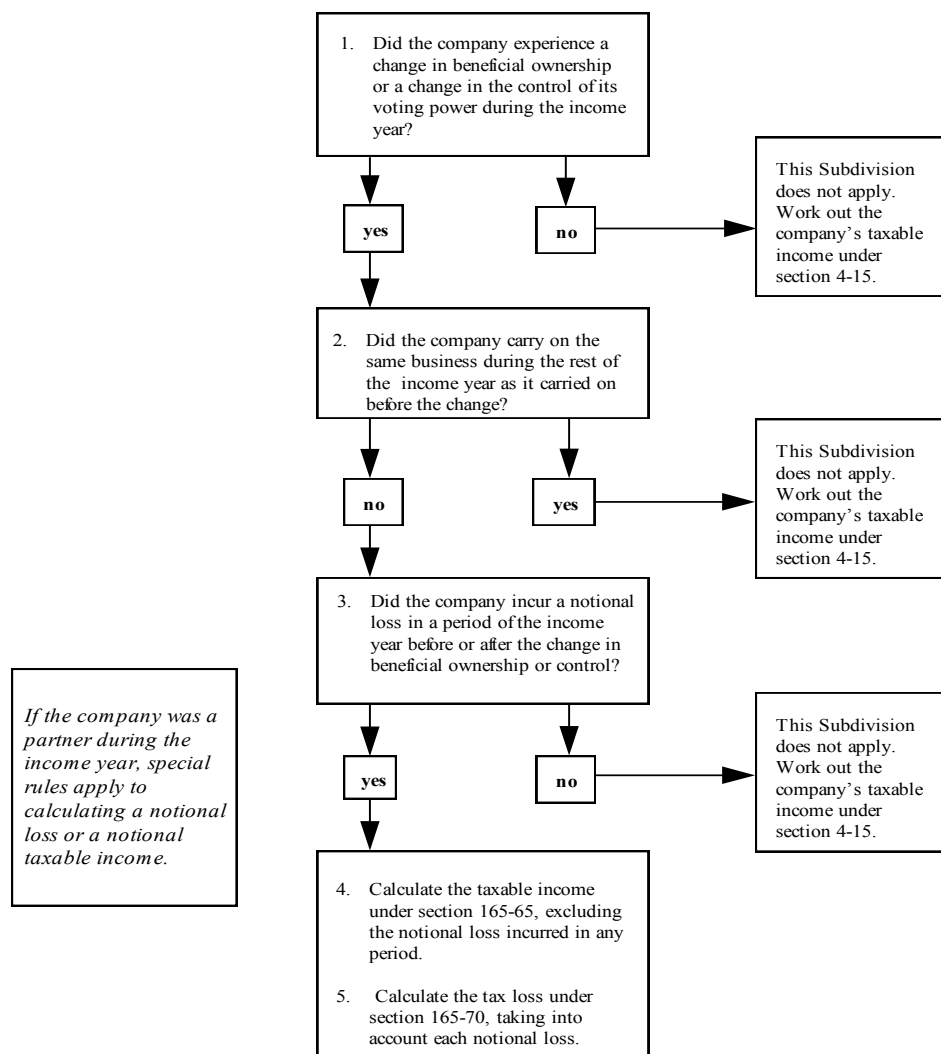
For the special rules that apply if the company was in partnership: see sections 165-75 to 165-90.

---

\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

---

### 165-30 Flow chart showing the application of this Subdivision



\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Section 165-35

---

**When a company must work out its taxable income and tax loss under this Subdivision**

**165-35 On a change of ownership, unless the company carries on the same business**

A company must calculate its taxable income and tax loss under this Subdivision unless:

- (a) there are persons who had \*more than a 50% stake in the company during the whole of the income year; or
- (b) there is only *part* of the income year (a part that started at the start of the income year) during which the same persons had \*more than a 50% stake in the company, but the company satisfies the \*same business test for the *rest* of the income year (the ***same business test period***).

For the purposes of paragraph (b), apply the \*same business test to the \*business that the company carried on immediately before the time (the ***test time***) when that part ended.

For the same business test: see Subdivision 165-E.

Note: In the case of a listed public company or its 100% subsidiary, Subdivision 166-B modifies how this Subdivision applies, unless the company chooses otherwise.

**165-37 Who has more than a 50% stake in the company during a period**

- (1) If:
  - (a) there are persons who had \*more than 50% of the voting power in the company during the whole of a period (the ***ownership test period***) consisting of the income year or a part of it; and

---

\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

---

Section 165-40

---

- (b) there are persons who had rights to \*more than 50% of the company's dividends during the whole of the ownership test period; and
  - (c) there are persons who had rights to \*more than 50% of the company's capital distributions during the whole of the ownership test period;
- those persons had more than a 50% stake in the company during the ownership test period.
- (2) To work out whether a condition in subsection (1) was satisfied during the \*ownership test period, apply the primary test for that condition unless subsection (3) requires the alternative test to be applied.

For the primary tests: see subsections 165-150(1), 165-155(1)  
and 165-160(1).

- (3) Apply the alternative test for that condition if one or more other companies beneficially owned \*shares, or interests in shares, in the company at any time during the \*ownership test period.

For the alternative tests: see subsections 165-150(2), 165-155(2)  
and 165-160(2).

**165-40 On a change of control of voting power in the company,  
unless the company carries on the same business**

- (1) A company must calculate its taxable income and tax loss under this Subdivision if, during the income year, a person begins to control, or becomes able to control, the voting power in the company (whether directly, or indirectly through one or more interposed entities) for the purpose, or for purposes including the purpose, of:
- (a) getting some benefit or advantage in relation to how this Act applies; or
  - (b) getting such a benefit or advantage for someone else.

---

\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

**Part 3-5** Corporate taxpayers and corporate distributions

**Division 165** Income tax consequences of changing ownership or control of a company

**Subdivision 165-B** Working out the taxable income and tax loss for the income year of the change

Section 165-45

---

- (2) However, that person's control of the voting power, or ability to control it, does not require the company to calculate its taxable income under this Subdivision if the company satisfies the \*same business test for the *rest* of the income year (the *same business test period*).
- (3) Apply the \*same business test to the \*business that the company carried on immediately before the time (the *test time*) when the person began to control that voting power, or became able to control it.

For the same business test: see Subdivision 165-E.

**Working out the company's taxable income**

**165-45 First, divide the income year into periods**

- (1) Divide the income year into periods as follows.
- (2) The first period starts at the start of the income year. Each later period starts immediately after the end of the previous period.
- (3) The last period ends at the end of the income year. Each period (except the last) ends at the *earlier* of:
  - (a) the *latest* time that would result in persons having \*more than a 50% stake in the company during the whole of the period; or
  - (b) the *earliest* time when a person begins to control, or becomes able to control, the voting power in the company (whether directly, or indirectly through one or more interposed entities) for the purpose, or for purposes including the purpose, of:
    - (i) getting some benefit or advantage to do with how this Act applies; or
    - (ii) getting such a benefit or advantage for someone else.

---

\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

---

Section 165-50

---

- (4) However, what would otherwise be 2 or more successive periods are treated as a single period if the company satisfies the \*same business test for all of them, considered as a single period (the **same business test period**). Apply the same business test to the \*business the company carried on immediately before the end of the first of the periods (the **test time**).

For the same business test: see Subdivision 165-E.

**165-50 Next, calculate the notional loss or notional taxable income for each period**

- (1) The company has a \*notional loss for a period if the deductions attributed to the period under section 165-55 exceed the assessable income attributed to the period under section 165-60. The **notional loss** is the amount of the excess.

For a period during which the company was in partnership, the notional loss is worked out under section 165-75.

- (2) On the other hand, if that assessable income exceeds those deductions, the company has a **notional taxable income** for the period, equal to the excess.

For a period during which the company was in partnership, the notional taxable income is worked out under section 165-75.

- (3) If the company has a \*notional loss for *none* of the periods in the income year, this Subdivision has no further application, and the company's taxable income for the income year is calculated in the usual way.

The usual way of working out taxable income is set out in section 4-15.

**165-55 How to attribute deductions to periods**

- (1) The company's deductions for the income year are attributed to periods in the income year as follows.

---

\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

---

**Part 3-5** Corporate taxpayers and corporate distributions

**Division 165** Income tax consequences of changing ownership or control of a company

**Subdivision 165-B** Working out the taxable income and tax loss for the income year of the change

Section 165-55

---

- (2) The following deductions are attributed to each period in proportion to the length of the period:

- (a) deductions for depreciation;

See sections 54 and following of the *Income Tax Assessment Act 1936*.

- (b) deductions for \*exploration or prospecting expenditure, or \*allowable capital expenditure, in connection with mining or quarrying, if the company has elected that the deductions not be limited by the \*available assessable income;

See Division 330.

- (c) deductions for expenditure, deductions for which are spread over 2 or more income years, but not:

- (i) deductions for \*exploration or prospecting expenditure, or capital expenditure, in connection with mining or quarrying; or

See Division 330.

- (ii) \*full year deductions (see subsection (5));

- (d) deductions for expenditure of capital monies in connection with an Australian film.

See section 124ZAFA of the *Income Tax Assessment Act 1936*.

- (3) All other deductions (except \*full year deductions) are attributed to periods as if each period were an income year.

- (4) \*Full year deductions are not attributed to any of the periods. They are brought in at a later stage of the process of calculating the company's taxable income for the income year.

- (5) These are **full year deductions**:

- (a) deductions allowable for bad debts under Division 8 (which is about deductions);
- (b) deductions allowable for bad debts under section 63 of the *Income Tax Assessment Act 1936* or for losses on debt/equity swaps under section 63E of that Act;

---

\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Section 165-60

---

- (c) deductions, so far as they are allowable under Division 8 (which is about deductions) because Subdivision H (Period of deductibility of certain advance expenditure) of Division 3 of Part III of the *Income Tax Assessment Act 1936* applies to the company in relation to the income year;
- (d) deductions allowable under section 78 (Deductions for gifts, pensions etc.) or 78B (Promoters recoupment tax) of the *Income Tax Assessment Act 1936*;
- (e) if the company is a \*leasing company, deductions allowable under:
  - (i) Subdivision B (Development Allowance) of Division 3 of Part III of the *Income Tax Assessment Act 1936*; or
  - (ii) Part XII of the *Income Tax Assessment Act 1936*, in respect of an item of drought mitigation property;
- (f) deductions for \*tax losses of earlier income years;  
See Division 36.
- (g) deductions for \*allowable capital expenditure in connection with mining or quarrying, except so far as the company has elected that the deductions not be limited by the \*available assessable income;  
See Division 330.
- (h) deductions for \*exploration or prospecting expenditure in connection with mining or quarrying, except so far as the company has elected that the deductions not be limited by the \*available assessable income;  
See Division 330.
- (i) deductions for Income Equalisation Deposits.  
See Division 16C of Part III of the *Income Tax Assessment Act 1936*.

---

\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

---

**Part 3-5** Corporate taxpayers and corporate distributions

**Division 165** Income tax consequences of changing ownership or control of a company

**Subdivision 165-B** Working out the taxable income and tax loss for the income year of the change

Section 165-60

---

- (6) However, a deduction for the balance of capital expenditure is *not* a \*full year deduction if the deduction results from the disposal, loss, lapse, termination of use or destruction of the property.

See subsection 330-485(2).

**165-60 How to attribute assessable income to periods**

- (1) The company's assessable income for the income year is attributed to periods in the income year as follows.
- (2) The following amounts are attributed to periods so far as they are reasonably attributable to those periods:
- (a) amounts included in the company's assessable income under section 97 (Beneficiary of a trust estate who is not under a legal disability) of the *Income Tax Assessment Act 1936*; or
  - (b) amounts included in the company's assessable income under section 98A (Non-resident beneficiaries assessable in respect of certain income) of the *Income Tax Assessment Act 1936*.
- (3) The following items of assessable income are attributed to each period in proportion to the length of the period:
- (a) insurance recoveries for loss of livestock or trees;  
See section 26B of the *Income Tax Assessment Act 1936*.
  - (b) amounts included in assessable income as a result of elections relating to the forced disposal of livestock;  
See sections 36, 36AAA and 36AA of the *Income Tax Assessment Act 1936*.
  - (c) recoupment of mains electricity connection expenditure.  
See section 70A of the *Income Tax Assessment Act 1936*.
- (4) An amount included in the company's assessable income under section 26BA (Double wool clips) of the *Income Tax Assessment Act 1936* is attributed to the period when the wool would ordinarily have been shorn.

---

\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Section 165-65

---

- (5) An amount included in the company's assessable income that is a \*dividend under:
- (a) section 65 (Payments to associated persons); or
  - (b) section 108 (Loans to shareholders and associates); or
  - (c) section 109 (Excessive payments to shareholders and associates);
- of the *Income Tax Assessment Act 1936* is attributed to the period when the amount was paid or credited, whichever occurred first.
- (6) All other items of assessable income (except \*full year amounts) are attributed to periods as if each period were an income year.
- (7) **Full year amounts** are amounts referred to in paragraphs (2)(a) and (b), so far as they are *not* reasonably attributable to a period. They are brought in at a later stage of the process of calculating the company's taxable income for the income year.

**165-65 How to calculate the company's taxable income for the income year**

- (1) The company's **taxable income** for the income year is calculated as follows.
- (2) Add up the \*notional taxable incomes (if any) worked out under section 165-50 or 165-75.
- Note: A notional *loss* for a period is *not* taken into account, but counts towards the company's tax loss for the income year.
- (3) Add the \*full year amounts referred to in subsection 165-60(7) (if any).
- (4) Subtract the company's \*full year deductions of these kinds:
- (a) deductions allowable for bad debts under Division 8 (which is about deductions);

---

\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

---

**Part 3-5** Corporate taxpayers and corporate distributions

**Division 165** Income tax consequences of changing ownership or control of a company

**Subdivision 165-B** Working out the taxable income and tax loss for the income year of the change

Section 165-70

---

- (b) deductions allowable for bad debts under section 63 of the *Income Tax Assessment Act 1936*;
- (c) deductions, so far as they are allowable under Division 8 (which is about deductions) because Subdivision H (Period of deductibility of certain advance expenditure) of Division 3 of Part III of the *Income Tax Assessment Act 1936* applies to the company in relation to the income year;  
unless they exceed the total of the \*notional taxable incomes and the \*full year amounts. (If they equal or exceed that total, the company does not have a taxable income for the income year.)
- (5) If an amount remains, subtract from it the company's other \*full year deductions, in the order shown in subsection 165-55(5), unless they exceed the amount remaining. (If they equal or exceed that amount, the company does not have a taxable income for the income year.)
- (6) If an amount remains, it is the company's **taxable income** for the income year.

**Working out the company's tax loss**

**165-70 How to calculate the company's tax loss for the income year**

- (1) The company's **tax loss** for the income year is calculated as follows.
- (2) Total the \*notional losses worked out under section 165-50 or 165-75.
- (3) Add to the total in subsection (2) the amount (if any) by which the company's \*full year deductions of these kinds:
  - (a) deductions allowable for bad debts under Division 8 (which is about deductions);

---

\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

- (b) deductions allowable for bad debts under section 63 of the *Income Tax Assessment Act 1936*;
  - (c) deductions, so far as they are allowable under Division 8 (which is about deductions) because Subdivision H (Period of deductibility of certain advance expenditure) of Division 3 of Part III of the *Income Tax Assessment Act 1936* applies to the company in relation to the income year;
- exceed the total of:
- (d) the \*notional taxable incomes (if any); and
  - (e) the \*full year amounts referred to in section 165-60 (if any).
- (4) If the company \*derived exempt income, subtract its \*net exempt income (worked out under section 36-20).
- (5) Any amount remaining is the company's **tax loss** for the income year, which is called a **loss year**.

To find out *how much* of the tax loss can be deducted in later income years: see Subdivision 165-A.  
To find out *how* to deduct it: see section 36-15.

## Special rules that apply if the company is in partnership

### 165-75 How to calculate the company's notional loss or notional taxable income for a period when the company was a partner

- (1) This section applies if at any time during a period the company was a partner in one or more partnerships.
- (2) The company has a \*notional loss for the period if the total (the **loss total**) of:
  - (a) the deductions attributed to the period under section 165-55;and

---

\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

**Part 3-5** Corporate taxpayers and corporate distributions

**Division 165** Income tax consequences of changing ownership or control of a company

**Subdivision 165-B** Working out the taxable income and tax loss for the income year of the change

Section 165-80

---

- (b) the company's share of each notional loss (if any) of a partnership for the period;  
exceeds the total (the *income total*) of:
- (c) the assessable income attributed to the period under section 165-60; and
- (d) the company's share of each \*notional net income (if any) of a partnership for the period.

The *notional loss* is the amount of the excess.

Note: A notional loss is taken into account in working out the company's tax loss under section 165-70.

- (3) On the other hand, if the \*income total exceeds the \*loss total, the company has a *notional taxable income* for the period, equal to the excess.

Note: A notional taxable income is taken into account in working out the company's taxable income under section 165-65.

- (4) If the company has a \*notional taxable income for *all* periods in the income year, this Subdivision has no further application, and the company's taxable income for the income year is calculated in the usual way.

Note: The usual way of working out taxable income is set out in section 4-15.

**165-80 How to calculate the company's share of a partnership's notional loss or notional net income for a period if both entities have the same income year**

- (1) This section applies if at any time during a period the company is a partner in a partnership that has an income year that starts and ends when the company's income year starts and ends.
- (2) The partnership's notional loss or notional net income for the period is calculated in the same way as the \*notional loss or \*notional taxable income of a company.

---

\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

- (3) The company's share is calculated by dividing:
- the company's interest in the partnership's net income or partnership loss of the income year;
- by
- the amount of that net income or partnership loss;
- and expressing the result as a percentage.
- (4) However, if the partnership had neither a net income nor a partnership loss, the company's share is a percentage that is fair and reasonable having regard to the extent of the company's interest in the partnership.

**165-85 How to calculate the company's share of a partnership's notional loss or notional net income for a period if the entities have different income years**

- (1) This section applies if at any time during a period the company is a partner in a partnership that has an income year that starts and ends at a different time from when the company's income year starts and ends.
- (2) So much of the partnership's net income or partnership loss of an income year as was \*derived during the period is a \*notional net income or \*notional loss of the partnership for the period. (For the purposes of this subsection, the partnership's net income or partnership loss is calculated without taking account of the partnership's \*full year deductions for that income year.)

Note: The partnership's full year deductions are dealt with in section 165-90.

- (3) The company's share is calculated by dividing:
- the company's interest in the partnership's net income or partnership loss of that income year;

---

\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Section 165-90

---

by

- the amount of that net income or partnership loss; and expressing the result as a percentage.

**165-90 Company's full year deductions include a share of partnership's full year deductions**

- (1) This section applies if at any time during the income year the company is a partner in a partnership that has one or more \*full year deductions for the income year of the partnership that corresponds to the income year of the company.
- (2) The partnership's \*full year deductions are treated as full year deductions of the company, but only to the extent of the company's share.
- (3) If the partnership's income year is the same as the company's, the company's share is calculated by dividing:
  - the company's interest in the partnership's net income or partnership loss of the income year;by
  - the amount of that net income or partnership loss; and expressing the result as a percentage.
- (4) However, if the partnership had neither a net income nor a partnership loss, the company's share is a percentage that is fair and reasonable having regard to the extent of the company's interest in the partnership.
- (5) If the partnership's income year does not start and end at the same time as the company's income year, the company's share is a percentage that is fair and reasonable having regard to all relevant circumstances.

---

\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

*[The next Subdivision is Subdivision 165-D.]*

## **Subdivision 165-D—Tests for finding out whether the company has maintained the same owners**

### **Table of sections**

#### **The primary and alternative tests**

- 165-150 Who has more than 50% of the voting power in the company during a period
- 165-155 Who has rights to more than 50% of the company's dividends during a period
- 165-160 Who has rights to more than 50% of the company's capital distributions during a period
- 165-165 Rules about the primary test for a condition
- 165-175 Tests can be satisfied by a single person

#### **Rules affecting the operation of the tests**

- 165-180 Arrangements affecting beneficial ownership of shares
- 165-185 Shares treated as never having carried rights
- 165-190 Shares treated as always having carried rights
- 165-195 Disregard redeemable shares
- 165-200 Rules do not affect totals of shares or rights
- 165-205 Death of beneficial owner

### **The primary and alternative tests**

#### **165-150 Who has more than 50% of the voting power in the company during a period**

##### *The primary test*

- (1) Applying the primary test: if there are persons who, at all times during the \*ownership test period, beneficially own (between them) \*shares that carry (between them) the right to exercise more than

---

\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Section 165-155

---

50% of the voting power in the company, those persons have ***more than 50% of the voting power*** in the company during that period.

*The alternative test*

- (2) Applying the alternative test: if it is the case, or it is reasonable to assume, that there are persons (none of them companies) who between them control, or are able to control, the voting power in the company at all times during the \*ownership test period (whether directly, or indirectly through one or more interposed entities), those persons have ***more than 50% of the voting power*** in the company during that period.

**165-155 Who has rights to more than 50% of the company's dividends during a period**

*The primary test*

- (1) Applying the primary test: if there are persons who, at all times during the \*ownership test period, beneficially own (between them) \*shares that carry (between them) the right to receive more than 50% of any \*dividends that the company may pay, those persons have rights to ***more than 50% of the company's dividends*** during that period.

*The alternative test*

- (2) Applying the alternative test: if it is the case, or it is reasonable to assume, that there are persons (none of them companies) who, at all times during the \*ownership test period, have between them the right to receive for their own benefit (whether directly, or indirectly through one or more interposed entities) more than 50% of any \*dividends that the company may pay, those persons have rights to ***more than 50% of the company's dividends*** during that period.

---

\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

**165-160 Who has rights to more than 50% of the company's capital distributions during a period**

*The primary test*

- (1) Applying the primary test: if there are persons who, at all times during the \*ownership test period, beneficially own (between them) \*shares that carry (between them) the right to receive more than 50% of any distribution of capital of the company, those persons have rights to ***more than 50% of the company's capital distributions*** during that period.

*The alternative test*

- (2) Applying the alternative test: if it is the case, or it is reasonable to assume, that there are persons (none of them companies) who, at all times during the \*ownership test period, have between them the right to receive for their own benefit (whether directly, or indirectly through one or more interposed entities) more than 50% of any distribution of capital of the company, those persons have rights to ***more than 50% of the company's capital distributions*** during that period.

**165-165 Rules about the primary test for a condition**

- (1) A person need not beneficially own exactly the same \*shares at all times during the \*ownership test period for the primary test for a condition to be satisfied.
- (2) A \*private company must satisfy the primary test for a condition in order for the test to be satisfied. A \*public company is taken to satisfy the primary test if it is reasonable to assume that the test is satisfied.

---

\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Section 165-175

---

**165-175 Tests can be satisfied by a single person**

To avoid doubt, a test for a condition can be satisfied by one person.

**Rules affecting the operation of the tests**

**165-180 Arrangements affecting beneficial ownership of shares**

- (1) For the purposes of a test, the Commissioner may treat a person as not having beneficially owned particular \*shares at a particular time during the \*ownership test period if the conditions in subsections (2) and (3) are met.
- (2) Before or during the income year an \*arrangement must have been entered into that in any way (directly or indirectly) related to, affected, or depended for its operation on:
  - (a) the beneficial interest in the \*shares, or the value of that beneficial interest; or
  - (b) a right carried by, or relating to, the \*shares; or
  - (c) the exercise of such a right.
- (3) The arrangement must also have been entered into for the purpose, or for purposes including the purpose, of eliminating or reducing a liability of an entity to pay income tax for a \*financial year.

**165-185 Shares treated as never having carried rights**

For the purposes of a test, \*shares are taken *never* to have carried particular rights during the income year if the Commissioner is satisfied that:

- (a) the shares *stopped* carrying those rights after the income year; or
- (b) the shares will or may *stop* carrying those rights after the income year;

---

\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

because of:

- (c) the company's \*constitution as in force at some time *during* the income year; or
- (d) an \*arrangement entered into before or during the income year.

### **165-190 Shares treated as always having carried rights**

For the purposes of a test, \*shares are taken to have carried particular rights *at all times* during the income year if the Commissioner is satisfied that:

- (a) the shares *started* to carry those rights after the income year; or
- (b) the shares will or may *start* to carry those rights after the income year;

because of:

- (c) the company's \*constitution as in force at some time *during* the income year; or
- (d) an \*arrangement entered into before or during the income year.

### **165-195 Disregard redeemable shares**

- (1) For the purposes of a test, a person who beneficially owns \*redeemable shares at a time during the income year, is taken not to own the shares beneficially at that time.
- (2) In applying a test for the purposes of Subdivision 165-A (which is about deducting tax losses of earlier income years), this section does not cover \*shares allotted before the \*loss year.

---

\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Section 165-200

---

**165-200 Rules do not affect totals of shares or rights**

Sections 165-180, 165-185, 165-190 and 165-195 do not affect how \*shares, and rights carried by \*shares, are counted for the purposes of determining:

- (a) the total voting power in the company; or
- (b) the total \*dividends that the company may pay; or
- (c) the total distributions of capital of the company.

**165-205 Death of beneficial owner**

For the purposes of a test, after a person dies, \*shares that the person owned beneficially at the time of death are taken to continue to be owned beneficially by the person so long as:

- (a) they are owned by the trustee of the person's estate; or
- (b) they are owned beneficially by someone who received them as a beneficiary of the estate.

**Subdivision 165-E—The same business test**

**165-210 The test**

- (1) The company satisfies the *same business test* if throughout the \*same business test period it carries on the same \*business as it carried on immediately before the \*test time.
- (2) However, the company does *not* satisfy the \*same business test if, at any time during the \*same business test period, it \*derives assessable income from:
  - (a) a \*business of a kind that it did not carry on before the \*test time; or
  - (b) a transaction of a kind that it had not entered into in the course of its business operations before the \*test time.

---

\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

- (3) The company also does *not* satisfy the \*same business test if, before the \*test time, it:
- (a) started to carry on a \*business it had not previously carried on; or
  - (b) in the course of its business operations, entered into a transaction of a kind that it had not previously entered into; and did so for the purpose, or for purposes including the purpose, of being taken to have carried on throughout the \*same business test period the same business as it carried on immediately before the test time.
- (4) So far as the \*same business test is applied for the purpose of Subdivision 165-B (which is about working out the taxable income and tax loss for the income year of change of ownership or control), the company also does *not* satisfy the test if, at any time during the \*same business test period, it incurs expenditure:
- (a) in carrying on a \*business of a kind that it did not carry on before the \*test time; or
  - (b) as a result of a transaction of a kind that it had not entered into in the course of its business operations before the \*test time.

---

\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

---

Section 166-1

---

**Division 166—Income tax consequences of changing ownership or control of a listed public company**

**Guide to Division 166**

**166-1 What this Division is about**

This Division modifies the way the rules in Division 165 apply to a listed public company (and also its 100% subsidiaries). It makes it easier for the company to comply with those rules:

- if the company has maintained the same owners as between certain points of time, it does not need to prove it has maintained the same owners throughout the periods in between;
- all shareholdings of less than 1% in the company are treated as if they were held by a single notional entity so that it is unnecessary to trace through to the persons who beneficially own those shareholdings;
- the company does not have to trace through any complying superannuation funds, complying approved deposit funds or special companies that are interposed between the company and persons who control any of the voting power, or who have rights to dividends or capital, in the company.

---

\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

### Table of Subdivisions

- 166-A Deducting tax losses of earlier income years
- 166-B Working out the taxable income and tax loss for the income year of the change
- 166-D Tests for finding out whether the listed public company has maintained the same owners
- 166-F How to treat shareholdings of less than 1%
- 166-G How to treat interposed superannuation funds, approved deposit funds and special companies

### Subdivision 166-A—Deducting tax losses of earlier income years

#### Table of sections

- 166-5 How Subdivision 165-A applies to a listed public company
- 166-10 How Subdivision 165-A applies to a 100% subsidiary of a listed public company
- 166-15 Companies can choose that this Subdivision is not to apply to them

### 166-5 How Subdivision 165-A applies to a listed public company

- (1) This Subdivision modifies the way Subdivision 165-A applies to a company that is a \*listed public company at all times during a period (the *test period*) consisting of the \*loss year, the income year and any intervening period.

Note 1: Subdivision 165-A is about the conditions a company must satisfy before it can deduct a tax loss for an earlier income year.

Note 2: This Subdivision also modifies how Subdivision 165-A applies to a 100% subsidiary of a listed public company: see section 166-10.

Note 3: A company can choose that this Subdivision is not to apply to it: see section 166-15.

---

\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Section 166-10

---

*Substantial continuity of ownership*

- (2) The \*listed public company is taken to have met the conditions in section 165-12 (which is about the company maintaining the same owners) if there is \*substantial continuity of ownership of the company as between the start of the \*test period and each of these other times in the period:
- (a) the time of each \*abnormal trading in \*shares in the company;  
and
  - (b) the end of each income year.

See section 166-145 to work out whether there is substantial continuity of ownership.

*No substantial continuity of ownership*

- (3) The \*listed public company is taken to have *failed* to meet the conditions in section 165-12 if there is *no* \*substantial continuity of ownership of the company as between the start of the \*test period and one or more of the other times referred to in subsection (2).

*Satisfies the same business test*

- (4) However, if the \*listed public company satisfies the \*same business test for the income year (the ***same business test period***), it is taken to have satisfied the condition in section 165-13 (which is about the company carrying on the same business).

For the same business test: see Subdivision 165-E.

- (5) Apply the \*same business test to the \*business that the \*listed public company carried on immediately before the first time (the ***test time***) covered by paragraph (2)(a) or (b) for which there was no \*substantial continuity of ownership of the company as between the start of the test period and that time.

---

\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

**166-10 How Subdivision 165-A applies to a 100% subsidiary of a listed public company**

- (1) This Subdivision also modifies the way Subdivision 165-A applies to a company that is *not* a \*listed public company, but only if the conditions in subsections (2) and (3) are met.

Note: Subdivision 165-A is about the conditions a company must satisfy before it can deduct a tax loss for an earlier income year.

- (2) The company (the *subsidiary*) must be a \*100% subsidiary of another company (the *holding company*) at all times during a period consisting of:
- (a) the \*loss year of the subsidiary; and
  - (b) the income year of the subsidiary; and
  - (c) any intervening period.
- (3) Also, the \*holding company must be a \*listed public company at all times during that period.
- (4) If the conditions are met then, for the purposes of applying Subdivision 165-A to the subsidiary, this Subdivision applies to the subsidiary as if:
- (a) the subsidiary were itself a \*listed public company at all times during that period; and
  - (b) an \*abnormal trading in \*shares in the \*holding company during that period were an abnormal trading in shares in the subsidiary.
- (Subdivisions 166-D, 166-F and 166-G apply to the subsidiary in the same way and for the same purpose.)

---

\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

---

**Part 3-5** Corporate taxpayers and corporate distributions

**Division 166** Income tax consequences of changing ownership or control of a listed public company

**Subdivision 166-B** Working out the taxable income and tax loss for the income year of the change

Section 166-15

---

**166-15 Companies can choose that this Subdivision is not to apply to them**

- (1) The \*listed public company or subsidiary can choose that Subdivision 165-A is to apply to it for the income year *without* the modifications made by this Subdivision.
- (2) The company must choose on or before the day it lodges its \*income tax return for the income year, or before a later day if the Commissioner allows.

**Subdivision 166-B—Working out the taxable income and tax loss for the income year of the change**

**Table of sections**

166-20	How Subdivision 165-B applies to a listed public company
166-25	How to work out the taxable income and tax loss
166-30	How Subdivision 165-B applies to a 100% subsidiary of a listed public company
166-35	Companies can choose that this Subdivision is not to apply to them

**166-20 How Subdivision 165-B applies to a listed public company**

- (1) This Subdivision modifies the way Subdivision 165-B applies to a company that is a \*listed public company at all times during the income year (the *test period*).

Note 1: Subdivision 165-B is about when a company must calculate its taxable income and tax loss for the income year in a special way.

Note 2: This Subdivision also modifies how Subdivision 165-B applies to a 100% subsidiary of a listed public company: see section 166-30.

Note 3: A company can choose that this Subdivision is not to apply to it: see section 166-35.

---

\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

---

*No abnormal trading*

- (2) If there is *no* \*abnormal trading in \*shares in the \*listed public company during the \*test period, it is taken to have met the condition in paragraph 165-35(a) (which is about there being persons having \*more than a 50% stake in it during the whole of the income year).

*Abnormal trading, but substantial continuity of ownership*

- (3) If there *is* \*abnormal trading, but there is \*substantial continuity of ownership of the company as between the start of the \*test period and the time of each abnormal trading, the company is also taken to have met the condition in paragraph 165-35(a).

See section 166-145 to work out whether there is substantial continuity of ownership.

*Abnormal trading without substantial continuity of ownership*

- (4) If there *is* \*abnormal trading, and there is *no* \*substantial continuity of ownership of the company as between the start of the \*test period and the time of the abnormal trading, the company is taken to have *failed* to meet the condition in paragraph 165-35(a).

*Satisfies the same business test*

- (5) However, if the company satisfies the \*same business test for the rest of the income year (the ***same business test period***) after the first \*abnormal trading covered by subsection (4), it is taken to have satisfied the condition in paragraph 165-35(b) (which is about the company carrying on the same business).

For the same business test: see Subdivision 165-E.

---

\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

**Part 3-5** Corporate taxpayers and corporate distributions

**Division 166** Income tax consequences of changing ownership or control of a listed public company

**Subdivision 166-B** Working out the taxable income and tax loss for the income year of the change

Section 166-25

---

- (6) Apply the \*same business test to the \*business that the company carried on immediately before the time of the first \*abnormal trading (the *test time*) covered by subsection (4).

**166-25 How to work out the taxable income and tax loss**

- (1) If the \*listed public company must calculate its taxable income and \*tax loss for the income year under Subdivision 165-B, then, in dividing the income year into periods, apply subsection (2) instead of subsection 165-45(3).
- (2) The last period ends at the end of the income year. Each period (except the last) ends at the *earlier* of:
- (a) the *earliest* time when there is an \*abnormal trading in \*shares in the \*listed public company (except one covered by subsection (3)); or
  - (b) the *earliest* time when a person begins to control, or becomes able to control, the voting power in the \*listed public company (whether directly, or indirectly through one or more interposed entities) for the purpose, or for purposes including the purpose, of:
    - (i) getting some benefit or advantage to do with how this Act applies; or
    - (ii) getting such a benefit or advantage for someone else.
- (3) In working out when a period ends, disregard an \*abnormal trading if there is \*substantial continuity of ownership of the company as between the start of the period and the time of the abnormal trading.

See section 166-145 to work out whether there is substantial continuity of ownership.

---

\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

---

**166-30 How Subdivision 165-B applies to 100% subsidiary of a listed public company**

- (1) This Subdivision also modifies the way Subdivision 165-B applies to a company that is *not* a \*listed public company, but only if the conditions in subsections (2) and (3) are met.

Note: Subdivision 165-B is about when a company must calculate its taxable income and tax loss for the income year in a special way.

- (2) The company (the **subsidiary**) must be a \*100% subsidiary of another company (the **holding company**) at all times during the income year of the subsidiary.
- (3) Also, the \*holding company must be a \*listed public company at all times during that income year.
- (4) If the conditions are met then, for the purposes of applying Subdivision 165-B to the subsidiary, this Subdivision applies to the subsidiary as if:
- (a) the subsidiary were itself a \*listed public company at all times during the income year; and
  - (b) an \*abnormal trading in \*shares in the \*holding company during the income year were an abnormal trading in shares in the subsidiary.
- (Subdivisions 166-D, 166-F and 166-G apply to the subsidiary in the same way and for the same purpose.)

**166-35 Companies can choose that this Subdivision is not to apply to them**

- (1) The \*listed public company or subsidiary can choose that Subdivision 165-B is to apply to it for the income year *without* the modifications made by this Subdivision.

---

\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

**Part 3-5** Corporate taxpayers and corporate distributions

**Division 166** Income tax consequences of changing ownership or control of a listed public company

**Subdivision 166-D** Tests for finding out whether the listed public company has maintained the same owners

Section 166-140

---

- (2) The company must choose on or before the day it lodges its  
\*income tax return for the income year, or before a later day if the  
Commissioner allows.

*[The next Subdivision is Subdivision 166-D.]*

**Subdivision 166-D—Tests for finding out whether the listed  
public company has maintained the same owners**

**Guide to Subdivision 166-D**

**166-140 What this Subdivision is about**

This Subdivision has the tests to work out whether a listed public company has maintained the same owners as between different times.

Subdivisions 166-F and 166-G have rules which make it easier for the company to satisfy these ownership tests.

Note: The rules in this Subdivision also apply to a company that is a 100% subsidiary of a listed public company: see sections 166-10 and 166-30.

**Table of sections**

**Substantial continuity of ownership**

166-145 Substantial continuity of ownership

**The ownership tests**

166-150 Who has more than 50% of the voting power in the listed public company at a particular time

---

\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

166-155 Who has rights to more than 50% of the listed public company's dividends at a particular time

166-160 Who has rights to more than 50% of the listed public company's capital distributions at a particular time

**Rules affecting the operation of the ownership tests**

166-165 Rules in Division 165 apply

**Substantial continuity of ownership**

**166-145 Substantial continuity of ownership**

- (1) There is *substantial continuity of ownership* of the \*listed public company as between the start of the \*test period and another time in the test period if (and only if) the conditions in this section are met.

*Voting power*

- (2) There must be persons (none of them companies) who had \*more than 50% of the voting power in the \*listed public company at the start of the \*test period. Also, those persons must have had \*more than 50% of the voting power in the \*listed public company immediately after the other time in the test period.

To work out who had more than 50% of the voting power: see section 166-150.

*Rights to dividends*

- (3) There must be persons (none of them companies) who had rights to \*more than 50% of the \*listed public company's \*dividends at the start of the \*test period. Also, those persons must have had rights to \*more than 50% of the \*listed public company's dividends immediately after the other time in the test period.

To work out who had rights to more than 50% of the listed public company's dividends: see section 166-155.

---

\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

**Part 3-5** Corporate taxpayers and corporate distributions

**Division 166** Income tax consequences of changing ownership or control of a listed public company

**Subdivision 166-D** Tests for finding out whether the listed public company has maintained the same owners

Section 166-150

---

*Rights to capital distributions*

- (4) There must be persons (none of them companies) who had rights to \*more than 50% of the \*listed public company's capital distributions at the start of the \*test period. Also, those persons must have had rights to \*more than 50% of the \*listed public company's capital distributions immediately after the other time in the test period.

To work out who had rights to more than 50% of the listed public company's capital distributions: see section 166-160.

*When to apply the test*

- (5) To work out whether a condition in this section was satisfied at a time (the **ownership test time**), apply the ownership test for that condition.

**The ownership tests**

**166-150 Who has more than 50% of the voting power in the listed public company at a particular time**

If it is the case, or it is reasonable to assume, that there are persons (none of them companies) who, at the \*ownership test time, between them control, or are able to control, the voting power in the \*listed public company (whether directly, or indirectly through one or more interposed entities), those persons have **more than 50% of the voting power in the listed public company** at that time.

**166-155 Who has rights to more than 50% of the listed public company's dividends at a particular time**

If it is the case, or it is reasonable to assume, that there are persons (none of them companies) who, at the \*ownership test time, have

---

\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

between them the right to receive for their own benefit (whether directly, or \*indirectly through one or more interposed entities) more than 50% of any \*dividends that the \*listed public company may pay, those persons have rights to *more than 50% of the listed public company's dividends* at that time.

**166-160 Who has rights to more than 50% of the listed public company's capital distributions at a particular time**

If it is the case, or it is reasonable to assume, that there are persons (none of them companies) who, at the \*ownership test time, have between them the right to receive for their own benefit (whether directly, or \*indirectly through one or more interposed entities) more than 50% of any distribution of capital of the \*listed public company, those persons have rights to *more than 50% of the listed public company's capital distributions* at that time.

**Rules affecting the operation of the ownership tests**

**166-165 Rules in Division 165 apply**

- (1) The rules in these sections also apply for the purposes of an ownership test in this Subdivision:
  - 165-175 (which is about how an ownership test can be satisfied by a single person);
  - 165-185 (which treats some \*shares as never having carried rights);
  - 165-190 (which treats some \*shares as always having carried rights);
  - 165-195 (which disregards redeemable \*shares);

---

\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

---

**Part 3-5** Corporate taxpayers and corporate distributions

**Division 166** Income tax consequences of changing ownership or control of a listed public company

**Subdivision 166-D** Tests for finding out whether the listed public company has maintained the same owners

Section 166-165

---

- 165-200 (which is about how other rules do not affect how \*shares or rights are counted);
  - 165-205 (which deals with deaths of beneficial owners).
- (2) The rule in section 165-180 (which is about arrangements affecting beneficial ownership of \*shares) also applies for the purposes of an ownership test in this Subdivision as if the reference to a particular time during the ownership test period were a reference to the ownership test time.

*[The next Subdivision is Subdivision 166-F.]*

---

\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

---

## **Subdivision 166-F—How to treat shareholdings of less than 1%**

### **Guide to Subdivision 166-F**

#### **166-215 What this Subdivision is about**

This Subdivision has rules which make it easier for the listed public company to satisfy the ownership tests in Subdivision 166-D.

All shareholdings of less than 1% in the company are treated as if they were held by a single notional entity. This means that the company does not have to trace through to the persons who beneficially own those shares.

A similar rule applies if another listed public company is interposed between the company and those persons. All shareholdings of less than 1% in the *interposed* company are treated as if they were held by a different single notional entity. This means that the company does not have to trace through to the persons who beneficially own those shares in the interposed company.

Note 1: The rules in this Subdivision also apply to a company that is a 100% subsidiary of a listed public company: see sections 166-10 and 166-30.

Note 2: The rules in this Subdivision do not apply if they would hide a failure by the company to maintain the same owners: see sections 166-250 and 166-255.

### **Table of sections**

#### **Special tracing rules for listed public companies**

166-220 Shareholdings of less than 1% in the listed public company

---

\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

**Part 3-5** Corporate taxpayers and corporate distributions

**Division 166** Income tax consequences of changing ownership or control of a listed public company

**Subdivision 166-F** How to treat shareholdings of less than 1%

Section 166-225

---

- 166-225 Shareholdings of less than 1% in an interposed listed public company
- 166-230 Notional shareholder
- 166-235 Notional shareholder taken to have minimum voting control, dividend rights and capital rights
- 166-240 Voting, dividend and capital shareholding of less than 1%
- 166-245 Shares that are part of a substantial shareholding

**When the rules in this Subdivision do not apply**

- 166-250 Limit on listed public company splitting its shares into different classes
- 166-255 If listed public company would not have otherwise passed the ownership tests

**Special tracing rules for listed public companies**

**166-220 Shareholdings of less than 1% in the listed public company**

This Subdivision modifies how the ownership tests are applied to the \*listed public company (the *head company*) if the company has:

- (a) \*voting shareholdings of less than 1%; or
- (b) \*dividend shareholdings of less than 1%; or
- (c) \*capital shareholdings of less than 1%.

For the ownership tests: see sections 166-150, 166-155 and 166-160.

**166-225 Shareholdings of less than 1% in an interposed listed public company**

- (1) This Subdivision also modifies how the ownership tests are applied to the \*head company if another \*listed public company (the *interposed company*) meets the conditions in subsections (2) and (3).

For the ownership tests: see sections 166-150, 166-155 and 166-160.

---

\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

- (2) The \*interposed company must be interposed between the \*head company and persons (none of them companies) who:
  - (a) control (or are able to control) voting power in the head company indirectly through the interposed company; or
  - (b) have the right to receive, for their own benefit and \*indirectly through the interposed company, any \*dividends the head company may pay; or
  - (c) have the right to receive, for their own benefit and \*indirectly through the interposed company, any distributions of capital of the head company.
- (3) The \*interposed company must have:
  - (a) \*voting shareholdings of less than 1%; or
  - (b) \*dividend shareholdings of less than 1%; or
  - (c) \*capital shareholdings of less than 1%.

### **166-230 Notional shareholder**

#### *Notional shareholder of the head company*

- (1) The ownership tests in sections 166-150, 166-155 and 166-160 are applied to the \*head company as if, at the \*ownership test time, a single notional entity (the **notional shareholder**):
  - (a) directly controlled the voting power in the head company that is carried by each \*voting shareholding of less than 1% in the company at that time; and
  - (b) had the right to receive, for its own benefit and directly:
    - (i) any \*dividends the head company may pay in respect of each \*dividend shareholding of less than 1% in the company at that time; and
    - (ii) any distributions of capital of the head company in respect of each \*capital shareholding of less than 1% in the company at that time; and

---

\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Section 166-230

---

- (c) were a person (other than a company).

*Notional shareholder of the interposed company*

- (2) The tests are also applied to the \*head company as if, at the \*ownership test time, for each \*interposed company, a different single notional entity (the ***notional shareholder***):
  - (a) directly controlled the voting power in the interposed company that is carried by each \*voting shareholding of less than 1% in the interposed company at that time; and
  - (b) had the right to receive, for its own benefit and directly:
    - (i) any \*dividends the interposed company may pay in respect of each \*dividend shareholding of less than 1% in the interposed company at that time; and
    - (ii) any distributions of capital of the interposed company in respect of each \*capital shareholding of less than 1% in the interposed company at that time; and
  - (c) were a person (other than a company).

*Persons who actually control or have rights are taken not to*

- (3) The tests are also applied to the \*head company as if, at the \*ownership test time:
  - (a) the persons (other than companies) who control (or are able to control) the voting power in the head company or interposed company (whether directly, or indirectly through one or more interposed entities) that is carried by each \*voting shareholding of less than 1% in the company had *not* had that control; and
  - (b) the persons (other than companies) who have the right to receive for their own benefit (whether directly, or \*indirectly through one or more interposed entities):

---

\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

- (i) any \*dividends that the head company or interposed company may pay in respect of each \*dividend shareholding of less than 1% in the company; and
  - (ii) any distributions of capital of the head company or interposed company in respect of each \*capital shareholding of less than 1% in the company;
- had *not* had that right.

**166-235 Notional shareholder taken to have minimum voting control, dividend rights and capital rights**

*Minimum control of voting power*

(1) If the \*ownership test time is *after* the start of the \*test period and:

- the voting power in the \*head company or \*interposed company that the \*notional shareholder controls at that time;

is greater than:

- the voting power in the company that the notional shareholder controlled at the start of that period;

the notional shareholder is taken to control voting power in the company at that time only to the extent that it controlled it at the start of that period.

*Minimum percentage of rights to dividends and capital*

(2) If the \*ownership test time is *after* the start of the \*test period and:

- the percentage of the \*dividends or distributions of capital of the \*head company or \*interposed company that the \*notional shareholder has the right to receive at that time;

is greater than:

---

\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Section 166-240

---

- the percentage (the ***lower percentage***) of the dividends or distributions of capital of the company that the notional shareholder had the right to receive at the start of that period;

the notional shareholder is taken to have the right to receive the lower percentage of the dividends or distributions of capital at that time.

**166-240 Voting, dividend and capital shareholding of less than 1%**

*Meaning of voting shareholding of less than 1%*

- (1) If all the \*shares in the \*head company or \*interposed company of which an entity is the registered holder at the \*ownership test time carry (between them) less than 1% of the voting power in the company, those shares (except shares that are \*part of a substantial shareholding) constitute a ***voting shareholding of less than 1%*** in the company at that time.

*Meaning of dividend shareholding of less than 1%*

- (2) If all the \*shares in the \*head company or \*interposed company of which an entity is the registered holder at the \*ownership test time carry (between them) the right to receive less than 1% of any \*dividends that the company may pay, those shares (except shares that are \*part of a substantial shareholding) constitute a ***dividend shareholding of less than 1%*** in the company at that time.

*Meaning of capital shareholding of less than 1%*

- (3) If all the \*shares in the \*head company or \*interposed company of which an entity is the registered holder at the \*ownership test time carry (between them) the right to receive less than 1% of any distribution of capital of the company, those shares (except shares that are \*part of a substantial shareholding) constitute a ***capital shareholding of less than 1%*** in the company at that time.

---

\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

**166-245 Shares that are part of a substantial shareholding**

- (1) \*Shares in a company *begin* to be ***part of a substantial shareholding*** of a person when the person gives the company:
- (a) a notice under section 709 of the Corporations Law from which it appears that the person or an associate (within the meaning of that section) had a \*relevant interest in the shares as at the day when the person became a substantial shareholder in the company; or
  - (b) a notice under section 710 of the Corporations Law from which it appears that the person or an associate (within the meaning of that section) had a \*relevant interest in the shares after the change in relevant interests because of which the notice had to be given;
- whichever happens first.
- (2) The \*shares *stop* being part of the substantial shareholding when the person gives the company:
- (a) a notice under section 710 of the Corporations Law from which it appears that neither the person nor an associate (within the meaning of that section) had a \*relevant interest in the shares after the change in relevant interests because of which the notice had to be given; or
  - (b) a notice under section 711 of the Corporations Law from which it appears that the person has stopped being a substantial shareholder in the company;
- whichever happens first.

---

\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

---

Section 166-250

---

**When the rules in this Subdivision do not apply**

**166-250 Limit on listed public company splitting its shares into different classes**

This Subdivision does not apply unless, at the \*ownership test time, all the \*voting shares in the \*head company carry (between them):

- (a) the right to receive more than 75% of any \*dividends the head company may pay; and
- (b) the right to receive more than 75% of any distributions of capital of the head company.

**166-255 If listed public company would not have otherwise passed the ownership tests**

This Subdivision does not apply for the purposes of section 166-5 or 166-20 if the Commissioner considers it reasonable to assume that the \*head company would not meet the conditions in that section if it were not for the rules in this Subdivision.

Note: The conditions in sections 166-5 and 166-20 require the listed public company to maintain the same owners at each ownership test time during the test period.

**Subdivision 166-G—How to treat interposed superannuation funds, approved deposit funds and special companies**

**Guide to this Subdivision**

**166-260 What this Subdivision is about**

This Subdivision has rules which make it easier for the listed public company to satisfy the ownership tests in Subdivision 166-D.

---

\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

The company does not have to trace through any complying superannuation funds, complying approved deposit funds or special companies that are interposed between the company and persons who control any of the voting power in the company, or who have rights to its dividends or capital.

Note: The rules in this Subdivision also apply to a company that is a 100% subsidiary of a listed public company: see sections 166-10 and 166-30.

## Table of sections

### Special tracing rules for listed public companies

166-265	When fund or special company is taken to control voting power
166-270	When fund or special company is taken to have rights to dividends and capital

## Special tracing rules for listed public companies

### 166-265 When fund or special company is taken to control voting power

- (1) This section modifies how the ownership test in section 166-150 (about control of voting) is applied to the \*listed public company if:
  - (a) a \*superannuation fund, \*approved deposit fund or \*special company is interposed, at the \*ownership test time, between persons (none of them companies) and the listed public company; and
  - (b) at the ownership test time, those persons control (or are able to control) any of the voting power in the listed public company indirectly through the fund or special company (or through entities including it); and

---

\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

---

**Part 3-5** Corporate taxpayers and corporate distributions

**Division 166** Income tax consequences of changing ownership or control of a listed public company

**Subdivision 166-G** How to treat interposed superannuation funds, approved deposit funds and special companies

Section 166-270

---

- (c) the fund or special company is a \*complying superannuation fund, \*complying approved deposit fund or special company at all times during the income year of the listed public company in which the \*ownership test time occurs.

*If fund or special company has more than 50 members*

- (2) If the fund or \*special company has more than 50 \*members, the test is applied as if, at the \*ownership test time, the fund or special company were a person (other than a company) who controlled the voting power in the \*listed public company that those persons control (or are able to control).

*If fund or special company has 50 members or less*

- (3) However, if the fund or \*special company has 50 \*members or less, the test is applied as if, at the \*ownership test time, each member were a person (other than a company) who controlled an equal proportion of the voting power in the \*listed public company that those persons control (or are able to control).

*Persons who actually control are taken not to control*

- (4) The test is applied as if, at the \*ownership test time, the voting power in the \*listed public company that those persons control (or are able to control) were *not* controlled by them (except as provided by subsection (3)).

**166-270 When fund or special company is taken to have rights to dividends and capital**

- (1) This section modifies how the ownership test in section 166-155 (about \*dividend rights) or 166-160 (about capital rights) is applied to the \*listed public company if:

---

\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

- (a) a \*superannuation fund, \*approved deposit fund or \*special company is interposed, at the \*ownership test time, between persons (none of them companies) and the listed public company; and
- (b) at the ownership test time, those persons have the right to receive for their own benefit, and \*indirectly through the fund or special company (or through entities including it):
  - (i) a percentage of any \*dividends that the listed public company may pay; or
  - (ii) a percentage of any distributions of capital of the listed public company; and
- (c) the fund or special company is a \*complying superannuation fund, \*complying approved deposit fund or special company at all times during the income year of the listed public company in which the \*ownership test time occurs.

---

\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

---

**Part 3-5** Corporate taxpayers and corporate distributions

**Division 166** Income tax consequences of changing ownership or control of a listed public company

**Subdivision 166-G** How to treat interposed superannuation funds, approved deposit funds and special companies

Section 166-270

---

*If fund or special company has more than 50 members*

- (2) If the fund or \*special company has more than 50 \*members, the test is applied as if, at the \*ownership test time, the fund or special company were a person (other than a company) who had the right to receive, for the person's own benefit, that percentage of those \*dividends or distributions of capital of the \*listed public company.

*If fund or special company has 50 members or less*

- (3) However, if the fund or \*special company has 50 \*members or less, the test is applied as if, at the \*ownership test time, each member were a person (other than a company) who had a right to receive, for the person's own benefit, an equal proportion of those \*dividends or distributions of capital.

*Persons who actually have the right are taken not to have it*

- (4) The test is applied as if, at the \*ownership test time, the persons (other than companies) who have the right to receive that percentage of those \*dividends or distributions of capital did *not* have that right (except as provided by subsection (3)).

*[The next Division is Division 170.]*

---

\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

## **Division 170—Treatment of company groups for income tax purposes**

### **Table of Subdivisions**

170-A Transfer of tax losses within wholly-owned groups of companies

### **Subdivision 170-A—Transfer of tax losses within wholly-owned groups of companies**

#### **Guide to Subdivision 170-A**

#### **170-1 What this Subdivision is about**

A company can transfer a surplus amount of its tax loss to another company so that the other company can deduct the amount in the income year of the transfer. Both companies must be members of the same wholly-owned group.

#### **Table of sections**

170-5 Basic principles for transferring tax losses

##### **Effect of transferring a tax loss**

170-10 When a company can transfer a tax loss

170-15 Income company is taken to have incurred transferred loss

170-20 Who can deduct transferred loss

170-25 Tax treatment of payment for transferred tax loss

##### **Conditions for transfer**

170-30 Companies must be in existence and members of the same wholly-owned group

---

\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

**Part 3-5** Corporate taxpayers and corporate distributions

**Division 170** Treatment of company groups for income tax purposes

**Subdivision 170-A** Transfer of tax losses within wholly-owned groups of companies

**Section 170-5**

---

- 170-35 The loss company
- 170-40 The income company
- 170-45 Maximum amount that can be transferred
- 170-50 Transfer by written agreement
- 170-55 Losses must be transferred in order they are incurred
- 170-60 Income company cannot transfer transferred tax loss

**Effect of agreement to transfer more than can be transferred**

- 170-65 Agreement transfers as much as can be transferred
- 170-70 Amendment of assessments

**170-5 Basic principles for transferring tax losses**

- (1) A company can transfer a tax loss to another company so that the other company can deduct it in the income year of the transfer.
- (2) Both companies must be members of the same \*wholly-owned group. There are other eligibility requirements that they must also satisfy.
- (3) The transferred loss must be “surplus” in the sense that the transferring company cannot use it because there is not enough assessable income to offset it. The other company must have enough assessable income to offset the transferred tax loss.
- (4) Neither company must be prevented from deducting the loss by Division 165 or 175.  

Note: Division 165 deals with the income tax consequences of changing ownership or control of a company. Division 175 deals with using a company’s tax losses to avoid income tax.
- (5) The tax loss is transferred by an agreement between the 2 companies.
- (6) The tax loss can be transferred in the same year as it is incurred. In that case different rules apply.

---

\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

---

## Effect of transferring a tax loss

### 170-10 When a company can transfer a tax loss

- (1) A company (the *loss company*) can transfer an amount of its \*tax loss for an income year (the *loss year*) to another company (the *income company*) if the conditions in this Subdivision are met.
- (2) The amount transferred can be the whole or part of the \*tax loss.

Note: A PDF cannot transfer a tax loss, except one for a period before it became a PDF: see section 195-10.

### 170-15 Income company is taken to have incurred transferred loss

- (1) If an amount of a \*tax loss is transferred, the \*amount is taken to be a tax loss incurred by the \*income company in the \*loss year.
- (2) However, if the \*loss year is the same as the \*income year of the transfer, the \*income company is taken to have incurred the \*tax loss in the income year before the loss year.

Note: This rule is needed because Division 36 allows a tax loss to be deducted only if it was incurred in an *earlier* income year.

### 170-20 Who can deduct transferred loss

- (1) If an amount of a \*tax loss is transferred, the \*income company can deduct the amount in accordance with section 36-15 (which is about how to deduct a tax loss), but only for the income year of the income company for which the amount is transferred. That income year is called the *deduction year*.
- (2) The \*loss company can no longer deduct the transferred amount and is taken not to have incurred the \*tax loss to the extent of that amount.

---

\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Section 170-25

---

**170-25 Tax treatment of payment for transferred tax loss**

- (1) A payment received for an amount of a \*tax loss is neither assessable income nor exempt income of the \*loss company.
- (2) The \*income company cannot deduct a payment it makes for an amount of a \*tax loss.

**Conditions for transfer**

**170-30 Companies must be in existence and members of the same wholly-owned group**

- (1) Both companies must be \*in existence during at least part of each of the following income years:
  - (a) the \*loss year; and
  - (b) the \*deduction year; and
  - (c) any intervening income year.
- (2) Also, both companies must be members of the same \*wholly-owned group during the whole or part of those income years when both companies were \*in existence.

**170-35 The loss company**

- (1) The \*loss company:
  - (a) must be an Australian resident; and
  - (b) must not be a \*dual resident investment company in either the \*loss year or the \*deduction year.
- (2) If the \*loss year and the \*deduction year are the same, it must be the case that the \*loss company was *not* required to calculate the \*tax loss:
  - (a) under section 165-70 (because of a change in ownership or control); or

---

\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

---

- (b) under section 175-35 (because of injected income or deductions).
- (3) Also, it must be the case that neither Subdivision 165-A nor Subdivision 175-A would have prevented the \*loss company from deducting the \*tax loss in the \*deduction year if it had had enough assessable income (including \*assessable film income) to offset the tax loss.

Note: Subdivision 165-A deals with the deductibility of a company's tax loss for an earlier income year if there has been a change in the ownership or control of the company in the loss year or the income year. Subdivision 175-A is about the Commissioner preventing a company from getting certain tax benefits through its unused tax losses.

#### **170-40 The income company**

- (1) The \*income company must be an Australian resident.
- (2) It must not be prevented by Division 165 or 175 from deducting the transferred amount in the \*deduction year. Those Divisions do not apply to the \*income company if the \*loss year and the \*deduction year are the same.

Note: Division 165 deals with the income tax consequences of changing ownership or control of a company. Division 175 deals with using a company's tax losses to avoid income tax.

---

\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

---

Section 170-45

---

**170-45 Maximum amount that can be transferred**

*Loss company can only transfer what it cannot use itself*

- (1) The amount transferred cannot exceed the amount of the \*loss company's \*tax loss that, apart from the transfer, the loss company would carry forward to the next income year after the \*deduction year.

Note: If the loss year and the deduction year are the same, the loss company would carry forward the *whole* of the tax loss, because Division 36 does not allow a tax loss to be deducted in the income year in which it was incurred.

Example: In the deduction year the loss company has:

- a tax loss from an earlier income year of \$25,000; and
- other deductions totalling \$10,000; and
- assessable income of \$20,000; and
- net exempt income of \$3,000.

Of the \$25,000 loss, the loss company can transfer no more than \$12,000 ( $\$25,000 - ((\$20,000 + \$3,000) - \$10,000)$ ) to the income company.

*Transferred loss must not exceed what the income company can use*

- (2) The amount transferred also cannot exceed the amount worked out as follows:

*Method statement*

*Step 1.* Add together the \*income company's assessable income and \*net exempt income (if any) for the \*deduction year.

*Step 2.* Subtract the \*income company's deductions for the \*deduction year, except deductions for amounts of \*tax

---

\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Section 170-45

---

losses transferred to the income company (by the \*loss company or any other company).

*Step 3.* Subtract the \*income company's deductions for the \*deduction year for amounts of \*tax losses transferred to the income company (by the \*loss company or any other company) by agreements made *before* the agreement by which the first amount is transferred.

Example: In the deduction year:

- the income company has assessable income of \$60,000, net exempt income of \$10,000 and deductions of \$25,000 (apart from the transferred loss); and
- another company, being a member of the same wholly-owned group as the income company, transferred a tax loss of \$15,000 to the income company; and
- the loss company incurred a tax loss of \$50,000.

Of the \$50,000 loss, the loss company can transfer no more than \$30,000 (\$60,000+\$10,000-\$25,000-\$15,000) to the income company.

(3) Subsection (2) does not apply if the \*tax loss is a \*film loss. In that case, the amount transferred also cannot exceed the amount worked out as follows:

*Method statement*

*Step 1.* Add together the \*income company's \*net assessable film income and \*net exempt film income (if any) for the \*deduction year.

---

\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Section 170-50

---

*Step 2.* Subtract the \*income company's deductions for the \*deduction year for amounts of \*film losses transferred to the income company (by the \*loss company or any other company) by agreements made *before* the agreement by which the first amount is transferred.

**170-50 Transfer by written agreement**

- (1) The transfer must be made by a written agreement between the \*loss company and the \*income company.
- (2) The agreement must:
  - (a) specify the income year of the transfer (which may be earlier than the income year in which the agreement is made); and
  - (b) specify the amount of the \*tax loss being transferred; and
  - (c) be signed by the public officer of each company; and
  - (d) be made on or before the day of lodgement of the \*income company's \*income tax return for the \*deduction year, or within such further time as the Commissioner allows.

Note: The agreement will usually be made in the next income year *after* the one for which the income company will deduct the loss.

**170-55 Losses must be transferred in order they are incurred**

- (1) If the \*loss company has 2 or more \*tax losses (other than \*film losses) that it can transfer in the \*deduction year, it can transfer them only in the order in which it incurred them.
- (2) If the \*loss company has 2 or more \*film losses that it can transfer in the \*deduction year, it can transfer them only in the order in which it incurred them.

---

\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

---

### **170-60 Income company cannot transfer transferred tax loss**

The \*income company cannot transfer an amount of a \*tax loss transferred to it, or any part of the amount.

### **Effect of agreement to transfer more than can be transferred**

#### **170-65 Agreement transfers as much as can be transferred**

- (1) If the amount specified in an agreement exceeds the maximum amount that the \*loss company can transfer to the \*income company in the \*deduction year, only that maximum amount is taken to have been transferred.
- (2) One reason why an agreement might specify more than can be transferred is that an assessment has been amended since the agreement.

#### **170-70 Amendment of assessments**

The Commissioner may amend an assessment to disallow a deduction for a transferred amount of a \*tax loss:

- (a) if the agreement to transfer the tax loss is ineffective because the \*loss company did not actually incur the loss; or
- (b) to the extent that section 170-65 reduces the transferred amount of a tax loss because the loss company did not actually incur some of it.

The Commissioner may do so despite section 170 (Amendment of assessments) of the *Income Tax Assessment Act 1936*.

*[The next Division is Division 175.]*

---

\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Section 175-1

---

**Division 175—Use of a company's tax losses or deductions to avoid income tax**

**Table of Subdivisions**

Guide to Division 175

175-A Tax benefits from unused tax losses

175-B Tax benefits from unused deductions

175-D Shareholding interest in the company

**Guide to Division 175**

**175-1 What this Division is about**

The Commissioner can reverse the effect of schemes that, in order to avoid tax, bring together in the same company:

- assessable income; and
- tax losses, or current year deductions, that apart from the scheme would not be fully used.

**Subdivision 175-A—Tax benefits from unused tax losses**

**Table of sections**

175-5 When Commissioner can disallow deduction for tax loss

175-10 First case: income injected into company because of available tax loss

175-15 Second case: someone else obtains a tax benefit because of tax loss available to company

---

\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

### **175-5 When Commissioner can disallow deduction for tax loss**

- (1) This Subdivision sets out cases where the Commissioner may disallow some or all of a \*tax loss (or of part of a tax loss) (the ***excluded loss***) as a deduction in calculating a company's taxable income of an income year after the \*loss year.
- (2) However, the Commissioner cannot disallow the \*excluded loss if:
  - (a) the company fails to meet a condition in section 165-12 (which is about the company maintaining the same owners) in respect of the income year; but
  - (b) meets the condition in section 165-13 (which is about the company carrying on the same \*business) in respect of the income year.

### **175-10 First case: income injected into company because of available tax loss**

- (1) The Commissioner may disallow the \*excluded loss if, during the income year, the company \*derived assessable income some or all of which (the ***injected income***) it would not have derived if the excluded loss had not been available to be taken into account for the purposes of:
  - Division 36 (which is about tax losses of earlier years);
  - Division 165 (which is about the income tax consequences of changing ownership or control of a company);
  - Subdivision 375-G (which is about \*film losses).
- (2) However, the Commissioner cannot disallow the \*excluded loss if the \*continuing shareholders will benefit from the derivation of the \*injected income to an extent that the Commissioner thinks fair and reasonable having regard to their respective rights and interests in the company.

---

\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Section 175-15

---

(3) The *continuing shareholders* are:

- (a) all of the persons who had \*more than 50% of the voting power in the company during the whole (or the relevant part) of the \*loss year and during the whole of the income year; and
- (b) all of the persons who had rights to \*more than 50% of the company's dividends during the whole (or the relevant part) of the loss year and during the whole of the income year; and
- (c) all of the persons who had rights to \*more than 50% of the company's capital distributions during the whole (or the relevant part) of the loss year and during the whole of the income year.

To find out who they were, apply whichever tests are applied in order to determine whether the company can deduct the \*tax loss (or the part of the tax loss) in the first place.

See section 165-12 (which is about the company maintaining the same owners).

**175-15 Second case: someone else obtains a tax benefit because of tax loss available to company**

- (1) The Commissioner may disallow the \*excluded loss if:
  - (a) a person has obtained or will obtain a tax benefit in connection with a \*scheme; and
  - (b) the scheme would not have been entered into or carried out if the excluded loss had not been available to be taken into account for the purposes of:
    - Division 36 (which is about tax losses of earlier years);
    - Division 165 (which is about the income tax consequences of changing ownership or control of a company);
    - Subdivision 375-G (which is about \*film losses).

---

\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

---

- (2) However, the Commissioner cannot disallow the \*excluded loss if:
- (a) the person had a \*shareholding interest in the company at some time during the income year; and
  - (b) the Commissioner considers the tax benefit to be fair and reasonable having regard to that shareholding interest.
- (3) An expression means the same in this section as in Part IVA of the *Income Tax Assessment Act 1936*.

### **Subdivision 175-B—Tax benefits from unused deductions**

#### **Table of sections**

175-20	Income injected into company because of available deductions
175-25	Deduction injected into company because of available income
175-30	Someone else obtains a tax benefit because of a deduction or income available to company
175-35	Tax loss resulting from disallowed deduction

#### **175-20 Income injected into company because of available deductions**

- (1) The Commissioner may disallow deductions of a company (or parts of them) for an income year if:
- (a) the company has \*derived assessable income some or all of which (the *injected income*) it would not have derived if it did not have those deductions; and
  - (b) the income was derived in that income year.
- The disallowed deductions and parts of deductions may exceed the amount of the injected income.
- Note: The disallowance may result in a tax loss for the income year. See section 175-35.
- (2) The Commissioner cannot disallow the deductions or parts of the deductions if the \*continuing shareholders will benefit from the

---

\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Section 175-25

---

derivation of the \*injected income to an extent that the Commissioner thinks fair and reasonable having regard to their respective \*shareholding interests in the company.

- (3) The *continuing shareholders* are the individuals who had \*shareholding interests in the company both immediately before the \*injected income was \*derived, and immediately afterwards.

**175-25 Deduction injected into company because of available income**

- (1) The Commissioner may disallow a deduction of a company for an income year to the extent that the company would not have incurred the loss, outgoing or expenditure that the deduction is for if it had not \*derived some or all of the assessable income it derived in that income year.

Note: The disallowance may result in a tax loss for the income year. See section 175-35.

- (2) The Commissioner cannot disallow any of the deduction if:
- (a) the \*continuing shareholders will benefit from any profit or advantage that has arisen or might arise directly or indirectly from the loss, outgoing or expenditure being incurred; and
  - (b) the Commissioner thinks that the extent to which they will benefit is fair and reasonable having regard to their respective \*shareholding interests in the company.
- (3) The *continuing shareholders* are the individuals who had \*shareholding interests in the company both immediately before the loss, outgoing or expenditure was incurred, and immediately afterwards.

**175-30 Someone else obtains a tax benefit because of a deduction or income available to company**

- (1) The Commissioner may disallow a deduction of a company if:

---

\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

---

Section 175-30

---

- (a) a person (other than the company) has obtained or will obtain a tax benefit in connection with a \*scheme; and
- (b) the scheme would not have been entered into or carried out if the company had not incurred some or all (the **available expense**) of the loss, outgoing or expenditure that the deduction is for.

However, the deduction may be disallowed only to the extent of the available expense.

- (2) The Commissioner may disallow deductions of a company (or parts of them) if:
  - (a) a person has obtained or will obtain a tax benefit in connection with a \*scheme; and
  - (b) the scheme would not have been entered into or carried out if the company had not \*derived some or all (the **available income**) of the assessable income it derived:
    - (i) before it incurred the losses, outgoings or expenditure that the deductions were for; and
    - (ii) in the same income year as it incurred them.

The disallowed deductions and parts of deductions may exceed the amount of the available income.

Note: The disallowance may result in a tax loss for the income year. See section 175-35.

- (3) An expression means the same in this section as in Part IVA of the *Income Tax Assessment Act 1936*.

---

\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

---

Section 175-35

---

- (4) The Commissioner cannot disallow under this section if:
  - (a) the person who has obtained or will obtain the tax benefit had a \*shareholding interest in the company at some time during the income year; and
  - (b) the Commissioner considers the tax benefit to be fair and reasonable having regard to that shareholding interest.

**175-35 Tax loss resulting from disallowed deductions**

- (1) If a company has a taxable income for an income year because the Commissioner disallows under this Subdivision deductions of the company for the income year (or parts of them), the company may also have a tax loss for the income year.
- (2) The company's **tax loss** for the income year is calculated as follows.
- (3) Total what the Commissioner has disallowed under this Subdivision.
- (4) If the company has exempt income for the income year, subtract its \*net exempt income.
- (5) Any amount remaining is the company's **tax loss** for the income year, which is called a **loss year**.

To find out *how much* of the tax loss can be deducted  
in later income years: see Subdivision 165-A.  
To find out *how* to deduct it: see section 36-15.

*[The next Subdivision is Subdivision 175-D.]*

---

\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

---

## **Subdivision 175-D—Shareholding interest in the company**

### **175-65 When a person has a shareholding interest in the company**

- (1) A person has a ***shareholding interest*** in the company if the person is the beneficial owner of:
  - (a) \*shares in the company; or
  - (b) an interest in \*shares in the company.
- (2) A person also has a ***shareholding interest*** in the company if:
  - (a) the person has a shareholding interest in another company;  
and
  - (b) the other company has a shareholding interest in the company (including one resulting from any other application or applications of this subsection).

*[The next Division is Division 195.]*

---

\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

---

## **Division 195—Special types of company**

### **Table of Subdivisions**

195-A Pooled development funds (PDFs)

### **Subdivision 195-A—Pooled development funds (PDFs)**

#### **Guide to Subdivision 195-A**

#### **195-1 What this Subdivision is about**

This Division contains rules about the income tax treatment of:

- pooled development funds (PDFs)
- shares in PDFs.

### **Table of sections**

#### **Working out a PDF's taxable income and tax loss**

195-5 Deductibility of PDF tax losses

195-10 PDF cannot transfer tax loss

195-15 Tax loss for year in which company becomes a PDF

### **Working out a PDF's taxable income and tax loss**

#### **195-5 Deductibility of PDF tax losses**

If a company is a \*PDF at the end of an income year for which it has a \*tax loss, it can deduct the tax loss in a later income year only if it is a PDF throughout the later income year.

---

\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

---

### **195-10 PDF cannot transfer tax loss**

If a company is a \*PDF at the end of an income year for which it has a \*tax loss, it cannot transfer any amount of the tax loss under Subdivision 170-A (which is about the transfer of tax losses within wholly-owned groups of companies).

### **195-15 Tax loss for year in which company becomes a PDF**

- (1) This section applies if a company becomes a \*PDF during an income year and is still a PDF at the end of it.
- (2) Divide the income year into periods as follows:
  - (a) the ***non-PDF period*** is the period beginning at the start of the income year and ending when the company becomes a \*PDF;
  - (b) the ***PDF period*** is the rest of the income year.
- (3) For each period, work out whether the company has a taxable income or a \*tax loss (or both), treating each period as if it were an income year.
- (4) If the company has:
  - (a) a taxable income for the non-PDF period; and
  - (b) a \*tax loss for the PDF period;that tax loss is a tax loss of the company for the income year.

Note: The company can only deduct the tax loss while it is a PDF: see section 195-5.
- (5) If the company has a \*tax loss for the non-PDF period:
  - (a) section 195-5 does *not* prevent the company from deducting its tax loss for the income year in a later income year; and

---

\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Section 195-15

---

- (b) section 195-10 does *not* prevent the company from transferring an amount of the tax loss under Subdivision 170-A (which is about the transfer of tax losses within wholly-owned groups of companies); to the extent that the tax loss does not exceed the tax loss for the non-PDF period.
- (6) These rules apply in addition to the other rules about how \*tax losses are applied or transferred.
- The other rules start in Division 36 (which is about tax losses of earlier income years).

*[The next Part is Part 3-45.]*

---

\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

---

## **Part 3-45—Rules for particular industries and occupations**

*[The next Division is Division 330.]*

### **Division 330—Mining and quarrying**

#### **Table of Subdivisions**

	Guide to Division 330
330-A	Exploration and prospecting
330-B	Exempt income from the sale of rights to mine
330-C	Development and operation of a mine or quarry
330-D	Cash bidding
330-E	Selling a right or information
330-F	Excess deductions
330-G	Petroleum resource rent tax payments
330-H	Transporting the product
330-I	Rehabilitating the site
330-J	Balancing adjustment
330-K	Partial change of ownership
330-L	Modification of Common rules
330-M	Special situations

---

\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

---

Section 330-1

---

## Guide to Division 330

### 330-1 What this Division is about

There are specific deductions for expenditure to do with mining and quarrying. The type of deduction available depends on what stage of the mining or quarrying process the expenditure relates to.

For the mining industry, certain income is made exempt from income tax.

### Table of sections

330-5	How petroleum mining is treated
330-10	Diagram—the stages of mining

### 330-5 How petroleum mining is treated

- (1) This Division has rules that are specific to mining and quarrying.
- (2) It includes mining for \*petroleum (*petroleum mining*) within the general scope of the term *mining*. *Minerals* is defined in subsection 330-25(1) to include \*petroleum.
- (3) Mining in general, quarrying and \*petroleum mining are treated as the same in most ways by this Division. Where there are differences, this Division explicitly tells you.

### 330-10 Diagram—the stages of mining

The diagram on the next page shows how this Act treats the mining and quarrying industries. However, it does not show all stages of the mining or quarrying process.

Two topics that this Division covers are *not* shown on the diagram:

---

\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

---

Section 330-10

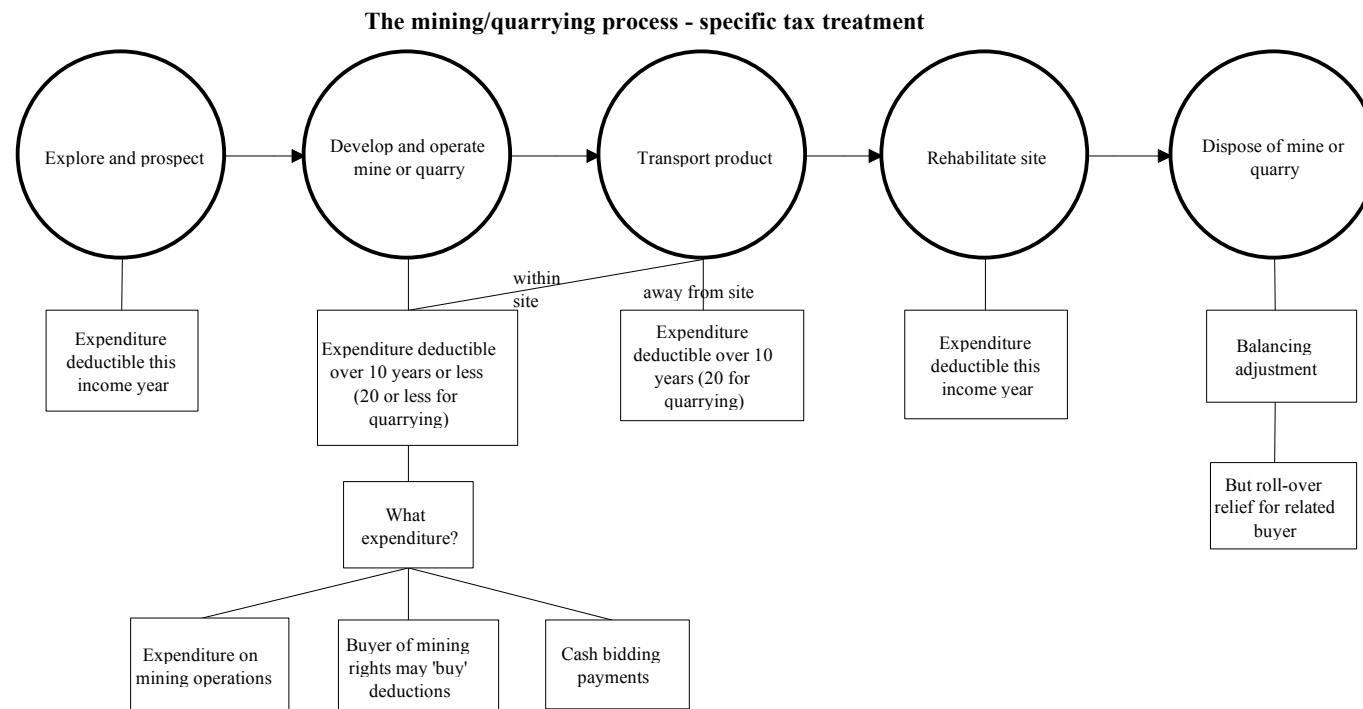
---

- \*ordinary income of \*genuine prospectors from the sale of rights to mine is exempt from income tax: see Subdivision 330-B;
- there is a specific deduction for payments of \*petroleum resource rent tax: see Subdivision 330-G.

---

\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

---



\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

## **Subdivision 330-A—Exploration and prospecting**

### **Table of sections**

330-15	Deduction for exploration or prospecting expenditure
330-20	Meaning of <i>exploration or prospecting</i>
330-25	Meaning of <i>minerals, petroleum</i> and <i>quarry materials</i>
330-30	Meaning of <i>eligible mining or quarrying operations</i>
330-35	No deduction for amount “transferred” by seller of right or information
330-40	Election that section 330-15 not apply to plant

### **330-15 Deduction for exploration or prospecting expenditure**

- (1) Expenditure (whether of a capital nature or not) you incur in the 1997-98 income year or a later income year on \*exploration or prospecting for \*minerals, or \*quarry materials, obtainable by \*eligible mining or quarrying operations is deductible for that income year.

Note: The amount you can deduct for that income year is subject to the excess deduction rules: see Subdivision 330-F.

- (2) However, you can deduct it only if during that income year you satisfy one or more of the tests set out in the following table:

---

\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

---

**Part 3-45** Rules for particular industries and occupations

**Division 330** Mining and quarrying

**Subdivision 330-A** Exploration and prospecting

.....  
Section 330-20

Item	For this type of expenditure:	the deductibility tests are:
1.	*Exploration or prospecting for *minerals (other than *petroleum)	<div><div>1. You carried on *eligible mining operations (other than *petroleum mining).</div><div>2. It would be reasonable to conclude you proposed to carry on such operations.</div><div>3. You carried on a *business of, or a *business that included, *exploration or prospecting for *minerals (other than *petroleum) obtainable by such operations, and the expenditure was necessarily incurred in carrying on that business.</div></div>
2.	*Exploration or prospecting for *quarry materials	<div><div>1. You carried on *eligible quarrying operations.</div><div>2. It would be reasonable to conclude you proposed to carry on such operations.</div><div>3. You carried on a *business of, or a *business that included, *exploration or prospecting for *quarry materials obtainable by such operations, and the expenditure was necessarily incurred in carrying on that business.</div></div>

.....  
\*To find the definition of this term, see the Dictionary, starting at section 995-1.

Section 330-20

Item	For this type of expenditure:	the deductibility tests are:
3.	*Exploration or prospecting for *petroleum	<ol style="list-style-type: none"> <li>1. You carried on *eligible mining operations in the course of *petroleum mining.</li> <li>2. It would be reasonable to conclude you proposed to carry on such operations.</li> <li>3. You carried on a *business of, or a *business that included, *exploration or prospecting for *petroleum obtainable by such operations, and the expenditure was necessarily incurred in carrying on that business.</li> </ol>

**330-20 Meaning of *exploration or prospecting***

- (1) *Exploration or prospecting* includes:
- (a) in the case of mining in general and quarrying:
    - (i) geological mapping, geophysical surveys, systematic search for areas containing \*minerals (other than \*petroleum) or \*quarry materials, and search by drilling or other means for such minerals or materials within those areas; and
    - (ii) search for ore within, or in the vicinity of, an ore-body or search for \*quarry materials by drives, shafts, cross-cuts, winzes, rises and drilling; and
  - (b) in the case of \*petroleum mining:
    - (i) geological, geophysical and geochemical surveys; and
    - (ii) exploration drilling and appraisal drilling; and
  - (c) feasibility studies to evaluate the economic feasibility of mining \*minerals or \*quarry materials once they have been discovered.

\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Section 330-25

---

(2) The following are not *exploration or prospecting*:

- (a) development drilling for \*petroleum;
- (b) operations in the course of working a mining property, quarrying property or \*petroleum field.

**330-25 Meaning of *minerals, petroleum and quarry materials***

(1) *Minerals* includes \*petroleum.

(2) *Petroleum* means:

- (a) any naturally occurring hydrocarbon, whether in a gaseous, liquid or solid state; or
- (b) any naturally occurring mixture of hydrocarbons, whether in a gaseous, liquid or solid state; or
- (c) any naturally occurring mixture of:
  - (i) one or more hydrocarbons, whether in a gaseous, liquid or solid state; and
  - (ii) one or more of the following: hydrogen sulphide, nitrogen, helium or carbon dioxide; or
- (d) any petroleum as defined by paragraph (a), (b) or (c) that has been returned to a natural reservoir.

(3) *Quarry materials* means any materials obtained by quarrying.

**330-30 Meaning of *eligible mining or quarrying operations***

(1) *Eligible mining or quarrying operations* means \*eligible mining operations or \*eligible quarrying operations.

(2) *Eligible mining operations* means:

- (a) mining operations on a mining property for extracting \*minerals (other than \*petroleum) from their natural site for the \*purpose of producing assessable income; or
- (b) mining operations for the purpose of obtaining \*petroleum for the \*purpose of producing assessable income.

---

\*To find the definition of this term, see the Dictionary, starting at section 995-1.

Section 330-35

---

- (3) ***Eligible quarrying operations*** means quarrying operations on a quarrying property for extracting \*quarry materials from their natural site for the \*purpose of producing assessable income. It does not include \*eligible mining operations.

**330-35 No deduction for amount “transferred” by seller of right or information**

You cannot deduct an amount of expenditure if:

- (a) you were the seller in an agreement under section 330-235 for the acquisition of a \*mining, quarrying or prospecting right or \*mining, quarrying or prospecting information; and
- (b) the amount was taken into account under paragraph 330-245(2)(b) in working out the limit on the amount that can be included in the agreement.

**330-40 Election that section 330-15 not apply to plant**

- (1) If you incur expenditure on \*plant that is deductible under section 330-15, you may elect not to deduct the expenditure under that section.

Note: Section 330-15 gives a deduction for exploration or prospecting expenditure.

- (2) If you so elect:
- (a) the expenditure is not deductible under that section; and
  - (b) any further expenditure you incur on that \*plant is also not deductible under that section.
- (3) You must make the election before the time by which you must lodge your \*income tax return for the first income year in which you incur expenditure on that \*plant. However, the Commissioner may allow you to do it later than that time.

---

\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

---

Section 330-60

**Subdivision 330-B—Exempt income from the sale of rights to mine**

**330-60 Genuine prospector exemption for ordinary income derived from the sale of rights to mine**

- (1) If you are a \*genuine prospector, your \*ordinary income (for the 1997-98 income year or a later income year) from the sale, transfer or assignment of your rights to mine, in a particular area in Australia, for:
- (a) a \*mineral covered by the following table of minerals; or
  - (b) gold; or
  - (c) ores of a metal covered by the following table of metals;
- is exempt from income tax.

Minerals	Metals
Asbestos	Antimony
Bauxite	Arsenic
Chromite	Beryllium
Emery	Bismuth
Fluorspar	Cobalt
Graphite	Columbium
Ilmenite	Copper
Kyanite	Lithium
Magnesite	Mercury
Manganese oxides	Molybdenum
Mica	Nickel
Monazite	Osmiridium
Pyrite	Platinum
Quartz crystals (piezo-electric quality)	Selenium
Radio-active ores	Strontium
Rutile	Tantalum
Sillimanite	Tellurium
Vermiculite	Tin
	Tungsten

\*To find the definition of this term, see the Dictionary, starting at section 995-1.

Section 330-60

<b>Minerals</b>	<b>Metals</b>
Zircon	Vanadium

- (2) The exemption only applies to so much of the \*ordinary income as exceeds the sum of:

- (a) any amounts you can deduct for that income year, or have deducted or can deduct for an earlier income year, under section 330-15 in respect of expenditure on \*exploration or prospecting for \*minerals (other than \*petroleum) in that area; and
- (b) any amounts you have deducted or can deduct for an earlier income year under section 122J of the *Income Tax Assessment Act 1936* in respect of expenditure on exploration or prospecting (within the meaning of that section) in that area.

Note 1: Subdivision 330-F (which is about excess deductions) of this Act disallows deductions that you would have otherwise been entitled to under this Division.

Note 2: Subsection 122J(4B) of the *Income Tax Assessment Act 1936* disallows deductions that you would have otherwise have been entitled to under section 122J of that Act.

Note 3: Amounts of exploration or prospecting expenditure in relation to that area that you could otherwise deduct for a *later* income year must be set off against the exempt income: see section 330-330.

- (3) A ***genuine prospector*** is:

- (a) an individual who has personally carried out all or a major part of the field work of prospecting for the \*mineral, gold or ores in that area, or has contributed to the expenditure someone else has incurred in the work of prospecting and development in that area; or
- (b) a company that has carried out all or a major part of such field work.

- (4) The exemption does not apply if:

---

\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

**Part 3-45** Rules for particular industries and occupations

**Division 330** Mining and quarrying

**Subdivision 330-C** Development and operation of a mine or quarry

Section 330-80

---

- (a) any party to the transaction has the power (under the terms of the transaction or otherwise) to directly or indirectly control the entry into the transaction by, or the activities in connection with the mining rights of, the other party to the transaction; or
- (b) any other person has the power (under the terms of the transaction or otherwise) to directly or indirectly control the entry into the transaction by, or the activities in connection with the mining rights of, the parties to the transaction.

**Subdivision 330-C—Development and operation of a mine or quarry**

**Table of sections**

330-80	Allowable capital expenditure is deductible
330-85	What is <i>allowable capital expenditure</i> ?
330-90	Housing and welfare in mining
330-95	Expenditure that is not <i>allowable capital expenditure</i>
330-100	How much is deductible over how long?
330-105	Meaning of <i>unrecouped expenditure</i>
330-110	Expenditure that does not relate to a mining property, quarrying property or petroleum field
330-115	Apportioning between mining and quarrying
330-120	Resuming use of property for qualifying purposes
330-125	Each mining property, quarrying property or petroleum field is separate from any other

**330-80 Allowable capital expenditure is deductible**

If you incur \*allowable capital expenditure in the 1997-98 income year or a later income year, an amount worked out under section 330-100 or 330-110 is deductible in respect of that expenditure for that income year and for a number of later income years.

Note 1: The amount you can deduct for an income year is subject to the excess deduction rules: see Subdivision 330-F.

---

\*To find the definition of this term, see the Dictionary, starting at section 995-1.

---

Section 330-85

---

Note 2: Sections 330-1 and 330-5 of the *Income Tax (Transitional Provisions) Act 1997* convert amounts of undeducted capital expenditure at the end of the 1996-97 income year into allowable capital expenditure incurred by you in the 1997-98 income year. Section 330-5 of that Act tells you how to deduct some of that expenditure.

**330-85 What is *allowable capital expenditure*?**

*Allowable capital expenditure* is capital expenditure you incur that is expenditure:

- (a) in carrying on \*eligible mining or quarrying operations; or
- (b) in preparing a site for such operations; or
- (c) on buildings or other improvements necessary for you to carry on such operations; or
- (d) in providing, or in contributing to the cost of providing:
  - (i) water, light or power for use on the site of such operations; or
  - (ii) access to, or communications with, the site of such operations; or
- (e) on buildings for use directly in connection with operating or maintaining \*plant that is primarily and principally for \*treating \*minerals, or \*quarry materials, that you obtain by carrying on such operations; or
- (f) on buildings or other improvements for use directly in connection with storing \*minerals, or \*quarry materials, to facilitate \*treating them with the kind of \*plant mentioned in paragraph (e) (whether the storage happens before or after the treatment); or
- (g) that you are taken to have incurred because of Subdivision 330-D (which is about cash bidding); or
- (h) on acquiring a \*mining, quarrying or prospecting right or \*mining, quarrying or prospecting information from another person, to the extent of the amount specified in an agreement for the acquisition of the right or information under section 330-235.

---

\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

---

Section 330-90

---

**330-90 Housing and welfare in mining**

Capital expenditure you incur on \*housing and welfare in carrying on \*eligible mining operations is also *allowable capital expenditure*, but only if:

- (a) in the case of residential accommodation—the accommodation is provided by you, on or adjacent to a site where you carry on \*eligible mining operations, for the use of:
  - (i) your \*employees, or someone else's \*employees, who are employed or engaged in your eligible mining operations, or in operations of yours that are connected with such operations; or
  - (ii) dependants of such employees; or
- (b) in the case of health, education, recreation or other similar facilities, or facilities for meals—the facilities:
  - (i) are on or adjacent to a site where you carry on eligible mining operations, and are principally for the benefit of the \*employees or dependants covered by paragraph (a); and
  - (ii) are not run for profit by any person, except in the case of facilities for meals (which may be run for profit); or
- (c) in the case of works, including works for providing water, light, power, access or communications—the works are carried out directly in connection with the accommodation or facilities covered by this section.

**330-95 Expenditure that is not *allowable capital expenditure***

- (1) Expenditure on or in relation to the following is *not allowable capital expenditure*:
  - (a) \*plant;
  - (b) railway lines, roads, pipelines or other facilities, for use wholly or partly for transporting \*minerals or \*quarry

---

\*To find the definition of this term, see the Dictionary, starting at section 995-1.

Section 330-100

---

materials, or their products, other than facilities used for transport wholly within the site of \*eligible mining or quarrying operations you carry on;

- (c) works carried out in connection with, or buildings or other improvements constructed or acquired for use in connection with, establishing, operating or using a port facility or other facility for ships;
- (d) an office building that is not at or adjacent to the site of \*eligible mining or quarrying operations you carry on.

*Housing and welfare in quarrying*

- (2) Expenditure on \*housing and welfare incurred in carrying on \*eligible quarrying operations is *not allowable capital expenditure*.

*Interpretation*

- (3) There is no implication that the expenditure referred to in subsections (1) and (2) would otherwise have been allowable capital expenditure as defined by section 330-85.

**330-100 How much is deductible over how long?**

- (1) The amount deductible under section 330-80 for a particular income year (the *current income year*) is worked out using this formula:

$$\frac{\text{unrecouped expenditure}}{\text{years remaining}}$$

where:

*unrecouped expenditure* has the meaning given by section 330-105.

*years remaining* has a varying meaning, depending on whether the \*allowable capital expenditure was incurred in:

---

\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Section 330-100

---

- (a) \*eligible mining operations other than in the course of \*petroleum mining: see subsection (2); or
- (b) \*eligible mining operations in the course of \*petroleum mining: see subsection (3); or
- (c) \*eligible quarrying operations: see subsection (4).

Note: This section may not apply if you incur allowable capital expenditure of the kind referred to in paragraph 330-85(1)(h): see section 330-110 (which is about expenditure that does not relate to a mining property, quarrying property or petroleum field).

*Mining other than petroleum mining*

- (2) For expenditure incurred in carrying on \*eligible mining operations other than in the course of \*petroleum mining, ***years remaining*** means:

- (a) the number equal to the difference between 10 and the number of income years (which may be zero) before the current income year for which an amount in respect of the expenditure was deductible; or
- (b) the number equal to the number of whole years in the estimated life of the mine, or proposed mine, on the mining property, or, if there is more than one such mine, of the mine that has the longest estimated life, as at the end of the current income year;

whichever number is less.

Note: If you carry on eligible mining operations (other than in the course of petroleum mining) on 2 or more mining properties, see section 330-125 (which is about each mining property being separate from any other).

*Petroleum mining*

- (3) For expenditure incurred in carrying on \*eligible mining operations in the course of \*petroleum mining, ***years remaining*** means:
- (a) the number equal to the difference between 10 and the number of income years (which may be zero) before the

---

\*To find the definition of this term, see the Dictionary, starting at section 995-1.

current income year for which an amount in respect of the expenditure was deductible; or

- (b) the number equal to the number of whole years in the estimated life of the \*petroleum field or proposed \*petroleum field as at the end of the current income year;

whichever number is less.

Note: If you carry on eligible mining operations in the course of petroleum mining on 2 or more petroleum fields, see section 330-125 (which is about each petroleum field being separate from any other).

#### *Quarrying*

- (4) For expenditure incurred in carrying on \*eligible quarrying operations, *years remaining* means:

- (a) the number equal to the difference between 20 and the number of income years (which may be zero) before the current income year for which an amount in respect of the expenditure was deductible; or
- (b) the number equal to the number of whole years in the estimated life of the quarry, or proposed quarry, on the quarrying property, or, if there is more than one such quarry, of the quarry that has the longest estimated life, as at the end of the current income year;

whichever number is less.

Note: If you carry on eligible quarrying operations on 2 or more quarrying properties, see section 330-125 (which is about each quarrying property being separate from any other).

#### *Estimates must be reasonable*

- (5) An estimate required by this section must be reasonable.

---

\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

---

Section 330-105

---

**330-105** Meaning of *unrecouped expenditure*

- (1) The *unrecouped expenditure* is the amount worked out by taking away from the amount of the \*allowable capital expenditure that is deductible the sum of:
- (a) any amount that was deductible under section 330-80 in respect of the \*allowable capital expenditure for an income year before the current income year; and
  - (b) any part of the \*allowable capital expenditure that was incurred on property (other than a \*mining, quarrying or prospecting right acquired under an agreement under section 330-235) that:
    - (i) has been disposed of, lost or destroyed; or
    - (ii) you otherwise stopped using for \*qualifying purposes; and was not deductible under section 330-80 for an income year before the current income year; and
  - (c) so much of any amounts specified in an agreement under section 330-235 in relation to acquiring from you, during or before the current income year, a \*mining, quarrying or prospecting right, or \*mining, quarrying or prospecting information, as:
    - (i) is attributable to that \*allowable capital expenditure; and
    - (ii) was not deductible under section 330-80 for an income year before the current income year.

Note: If you have exempt income in the current income year from the sale, transfer or assignment of your rights to mine in a particular area in Australia, your unrecouped expenditure for that income year or a later income year may be reduced: see sections 330-15 and 330-20 of the *Income Tax (Transitional Provisions) Act 1997*.

- (2) In working out the *unrecouped expenditure*, disregard:
- section 330-300 (which is about the limit on amounts that are deductible under Subdivision 330-C for the income year); and

---

\*To find the definition of this term, see the Dictionary, starting at section 995-1.

- section 330-315 (which allows you to elect not to limit the amounts deductible under Subdivision 330-C).

**330-110 Expenditure that does not relate to a mining property, quarrying property or petroleum field**

(1) If:

- (a) you incur \*allowable capital expenditure of the kind referred to in paragraph 330-85(1)(h) in the 1997-98 income year or a later income year; and
- (b) you are carrying on \*eligible mining or quarrying operations on one or more mining properties, quarrying properties or \*petroleum fields; and
- (c) that expenditure does not relate to any of those properties or fields;

an amount worked out under subsection (2) is deductible in respect of that expenditure for that income year and for a number of later income years.

Note: Paragraph 330-85(1)(h) deals with capital expenditure you incur on acquiring a mining, quarrying or prospecting right or mining, quarrying or prospecting information.

*How much is deductible over how long?*

(2) The amount deductible under subsection (1) is:

- (a) if you are carrying on \*eligible mining operations—10% of that expenditure for that income year and for each of the next 9 income years; or
- (b) if you are carrying on \*eligible quarrying operations—5% of that expenditure for that income year and for each of the next 19 income years.

Note: The amount you can deduct for an income year is subject to the excess deduction rules: see Subdivision 330-F.

---

\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

---

Section 330-115

---

**330-115 Apportioning between mining and quarrying**

If a particular amount of \*allowable capital expenditure is covered by both of the following categories:

- (a) expenditure attributable to \*eligible mining operations;
- (b) expenditure attributable to \*eligible quarrying operations;

the amount must be apportioned between the 2 categories reasonably.

**330-120 Resuming use of property for qualifying purposes**

If:

- (a) you have incurred \*allowable capital expenditure on property that you have stopped using for \*qualifying purposes; and
- (b) the property later comes back into use by you for qualifying purposes;

so much of that expenditure as is reasonable is, for the purposes of this Division, taken to have been incurred by you on that property, on the day when the property so came back into use.

**330-125 Each mining property, quarrying property or petroleum field is separate from any other**

- (1) This section applies if you carry on \*eligible mining or quarrying operations on 2 or more mining properties, quarrying properties or \*petroleum fields.
- (2) This Subdivision applies to your operations on and in connection with each of those properties or fields as if it were the only property or field on which you carried on \*eligible mining or quarrying operations.
- (3) In applying this Subdivision in relation to a mining property, quarrying property or \*petroleum field:

---

\*To find the definition of this term, see the Dictionary, starting at section 995-1.

---

Section 330-145

---

- (a) any matters or things relating exclusively to any other mining property, quarrying property or petroleum field on which you carried on \*eligible mining or quarrying operations are disregarded; and
- (b) amounts of expenditure that relate to 2 or more mining properties, quarrying properties or petroleum fields must be apportioned between the properties or fields reasonably.

**Subdivision 330-D—Cash bidding**

**Guide to Subdivision 330-D**

**330-145 What this Subdivision is about**

This Subdivision treats certain exploration or prospecting cash bidding payments and mining cash bidding payments as capital expenditure for the purposes of this Division. This does not apply to quarrying.

---

\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

---

**Part 3-45** Rules for particular industries and occupations

**Division 330** Mining and quarrying

**Subdivision 330-D** Cash bidding

Section 330-150

---

**Table of sections**

**Operative provisions**

330-150	Mining cash bidding payments
330-155	Meaning of <i>mining cash bidding payment</i> and <i>mining authority</i>
330-160	Exploration or prospecting cash bidding payments made when mining authority has been granted
330-165	Meaning of <i>exploration or prospecting cash bidding payment</i> and <i>exploration or prospecting authority</i>
330-170	Exploration or prospecting cash bidding payments made before mining authority has been granted
330-175	Meaning of <i>entitlement to an eligible cash bidding amount</i>
330-180	Transfer of entitlement to an eligible cash bidding amount
330-185	Limit on amount
330-190	Time limit on agreement
330-195	Agreement must be in writing and signed
330-200	When a mining authority is related to an exploration or prospecting authority
330-205	Meaning of <i>retention authority</i>
330-210	When a retention authority is related to an exploration or prospecting authority
330-215	Effect of renewal of authority

**Operative provisions**

**330-150 Mining cash bidding payments**

Each \*mining cash bidding payment you pay is, for the purposes of this Division, capital expenditure incurred by you:

- (a) if you pay the amount before the grant of the \*mining authority concerned—at the time of the grant; and
- (b) otherwise—when you pay the amount.

---

\*To find the definition of this term, see the Dictionary, starting at section 995-1.

---

### **330-155 Meaning of *mining cash bidding payment* and *mining authority***

- (1) A ***mining cash bidding payment*** is an amount paid for the grant of a \*mining authority, but only if:
  - (a) the mining authority was auctioned or tendered for, or was granted to a person who responded to a public invitation to apply for it within a specified period or by a specified day; and
  - (b) the amount is not an application fee or a deposit, except to the extent that the amount is applied in payment for the grant of the mining authority; and
  - (c) the amount is incurred in carrying on \*eligible mining operations or for the purpose of exploring or prospecting for \*minerals obtainable by such operations.
- (2) A ***mining authority*** is any permit, licence, lease or other authority that:
  - (a) is granted under an \*Australian law or a \*foreign law; and
  - (b) authorises carrying on \*eligible mining operations (other than merely taking samples), whether or not it also authorises other things.

### **330-160 Exploration or prospecting cash bidding payments made when mining authority has been granted**

If:

- (a) you make an \*exploration or prospecting cash bidding payment in relation to the grant of an \*exploration or prospecting authority; and
- (b) the payment is made at or after the time of the grant of a \*mining authority that is \*related to the exploration or prospecting authority;

---

\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Section 330-165

---

the amount of the payment is, for the purposes of this Division, capital expenditure you incur at the time of payment.

**330-165 Meaning of *exploration or prospecting cash bidding payment* and *exploration or prospecting authority***

- (1) An *exploration or prospecting cash bidding payment* is an amount paid for the grant of an \*exploration or prospecting authority, but only if:
  - (a) the authority was auctioned or tendered for, or was granted to a person who responded to a public invitation to apply for it within a specified period or by a specified day; and
  - (b) the amount is not an application fee or a deposit, except to the extent that the amount is applied in payment for the grant of the exploration or prospecting authority; and
  - (c) the amount is incurred in carrying on \*eligible mining operations or for the purpose of exploring or prospecting for \*minerals obtainable by such operations.
- (2) An *exploration or prospecting authority* is any permit, licence, lease or other authority (other than a \*mining authority) that:
  - (a) is granted under an \*Australian law or a \*foreign law; and
  - (b) authorises \*exploration or prospecting for \*minerals, whether or not it also authorises other things.

**330-170 Exploration or prospecting cash bidding payments made before mining authority has been granted**

- (1) If:
  - (a) a \*mining authority is granted; and
  - (b) it is the first or only mining authority that is related to a particular \*cash bidding exploration or prospecting authority; and

---

\*To find the definition of this term, see the Dictionary, starting at section 995-1.

---

Section 330-175

---

- (c) immediately before the grant of the mining authority you have one or more \*qualifying interests in relation to the \*exploration or prospecting authority and you also have an \*entitlement to an eligible cash bidding amount in relation to the exploration or prospecting authority;
- you are taken for the purposes of this Division to have incurred, when the mining authority is granted, capital expenditure in relation to the qualifying interest or interests of an amount equal to the eligible cash bidding amount.
- (2) A ***cash bidding exploration or prospecting authority*** is an \*exploration or prospecting authority in respect of which an \*exploration or prospecting cash bidding payment is or was made.
- (3) You have a ***qualifying interest*** in relation to an \*exploration or prospecting authority if you are the holder of, or of an interest in, the authority or a \*retention authority that is related to it.

**330-175 Meaning of *entitlement to an eligible cash bidding amount***

If, at a particular time (the ***test time***):

- (a) a person is the holder of one or more \*qualifying interests in relation to a \*cash bidding exploration or prospecting authority; and
- (b) the \*exploration or prospecting authority was granted to the person (whether or not the person holds the authority at the test time); and
- (c) the sum of:
  - the \*exploration or prospecting cash bidding payment, or the \*exploration or prospecting cash bidding payments, paid before the test time in relation to the grant of the authority; and
  - all amounts (if any) specified in agreements made (including after the test time) under section 330-180 in

---

\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Section 330-180

---

relation to the acquisition by the person of \*qualifying interests in relation to the authority before the test time; exceeds:

- the sum of all amounts (if any) specified in agreements made (including after the test time) under section 330-180 in relation to the acquisition from the person of \*qualifying interests in relation to the authority before the test time;

then the person is taken to have at the test time in relation to the authority an *entitlement to an eligible cash bidding amount* equal to the amount of the excess.

**330-180 Transfer of entitlement to an eligible cash bidding amount**

If:

- (a) at any time before the grant of the first or only \*mining authority that is related to a \*cash bidding exploration or prospecting authority, a person (the *buyer*) incurs expenditure in acquiring a \*qualifying interest in relation to the \*exploration or prospecting authority from another person (the *seller*); and
- (b) the seller has an \*entitlement to an eligible cash bidding amount in relation to the exploration or prospecting authority;

the buyer and seller may agree to transfer to the buyer so much of the seller's entitlement to the eligible cash bidding amount as is specified in the agreement.

**330-185 Limit on amount**

An agreement under section 330-180 must specify, as the amount of the entitlement that is to be transferred to the buyer, an amount that does not exceed:

---

\*To find the definition of this term, see the Dictionary, starting at section 995-1.

---

Section 330-190

---

- the expenditure incurred by the buyer in acquiring the \*qualifying interest in relation to the \*exploration or prospecting authority;

less:

- any amount of that expenditure specified in an agreement previously made under section 330-235 in relation to the acquisition.

Note: Section 330-235 is about the acquisition of a mining, quarrying or prospecting right or mining, quarrying or prospecting information.

**330-190 Time limit on agreement**

An agreement under section 330-180 must be made no later than 2 months after the end of the income year of the buyer in which the acquisition occurred, or later if the Commissioner allows.

**330-195 Agreement must be in writing and signed**

An agreement under section 330-180 must be in writing and signed by the buyer and the seller.

**330-200 When a mining authority is related to an exploration or prospecting authority**

A \*mining authority is *related* to an \*exploration or prospecting authority if, because of the grant of the mining authority:

- (a) the exploration or prospecting authority; or
- (b) a \*retention authority that is \*related to the exploration or prospecting authority;

ceases to be in force in respect of the whole or part of the area in respect of which the mining authority is granted.

---

\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

---

Section 330-205

---

**330-205 Meaning of *retention authority***

A *retention authority* is any permit, licence, lease or other authority in relation to an area (other than a \*mining authority) that:

- (a) is granted under an \*Australian law or a \*foreign law; and
- (b) is only permitted to be granted to a person who is the holder of, or who has an interest in, an \*exploration or prospecting authority, or a retention authority, in relation to the area.

**330-210 When a retention authority is related to an exploration or prospecting authority**

A \*retention authority is *related* to an \*exploration or prospecting authority if, because of the grant of the retention authority, the exploration or prospecting authority ceases to be in force in respect of the whole or part of the area in respect of which the retention authority is granted.

**330-215 Effect of renewal of authority**

If an \*exploration or prospecting authority (the *original authority*) or a \*retention authority (also the *original authority*) is renewed, the renewed authority is taken to be a continuation of the original authority, even if the renewal is not granted in respect of all of the area in respect of which the original authority was granted.

**Subdivision 330-E—Selling a right or information**

**Table of sections**

330-235	Buyer and seller may agree to include allowable capital expenditure
330-240	Meaning of <i>mining, quarrying or prospecting right</i> and <i>mining, quarrying or prospecting information</i>
330-245	Limit on amount that can be included in the agreement
330-250	Capital expenditure on buildings or other improvements only counts toward the limit if buyer gets rights to them
330-255	Time limit on agreement

---

\*To find the definition of this term, see the Dictionary, starting at section 995-1.

Section 330-235

---

- 330-260 Agreement must be signed and in writing  
330-265 Election under subsection 88B(5) of the *Income Tax Assessment Act 1936* voids agreement  
330-270 Agreement results in seller giving up further deductions  
330-275 Apportionment between mining and quarrying

**330-235 Buyer and seller may agree to include allowable capital expenditure**

If a person (the *buyer*) has incurred expenditure in acquiring from another person (the *seller*) for the purpose of carrying on \*eligible mining or quarrying operations, or \*exploration or prospecting for \*minerals or \*quarry materials obtainable by such operations:

- (a) a \*mining, quarrying or prospecting right; or
- (b) \*mining, quarrying or prospecting information;

the buyer and the seller may agree to include in the \*allowable capital expenditure of the buyer an amount specified in the agreement.

**330-240 Meaning of *mining, quarrying or prospecting right* and *mining, quarrying or prospecting information***

- (1) A *mining, quarrying or prospecting right* is:
- (a) an authority, licence, permit or right under an \*Australian law to mine, quarry or prospect for \*minerals or \*quarry materials in a particular area; or
  - (b) a lease of land that allows the lessee to mine, quarry or prospect for \*minerals or \*quarry materials on the land; or
  - (c) an interest in such an authority, licence, permit, right or lease; or
  - (d) any rights that:
    - (i) are in respect of buildings or other improvements (including anything covered by the definition of \*housing and welfare) that are on the land concerned or are used in connection with operations on it; and

---

\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

---

Section 330-245

---

- (ii) are acquired with such an authority, licence, permit, right, lease or interest.

However, a right in respect of anything covered by the definition of \*housing and welfare in relation to a quarrying site is not a ***mining, quarrying or prospecting right***.

- (2) ***Mining, quarrying or prospecting information*** is geological, geophysical or technical information that:
- (a) relates to the presence, absence or extent of deposits of \*minerals or \*quarry materials in an area; or
  - (b) is likely to help in determining the presence, absence or extent of such deposits in an area;
- and has been obtained from \*exploration or prospecting, or \*eligible mining or quarrying operations.

**330-245 Limit on amount that can be included in the agreement**

- (1) The amount included in the agreement cannot exceed:
- the amount of expenditure the buyer incurs in the acquisition;
- less:
- any amount that is the subject of an agreement made under section 330-180 (which is about the transfer of an \*entitlement to an eligible cash bidding amount).
- (2) The amount included also cannot exceed the total of:
- (a) the \*allowable capital expenditure the seller incurs before the transaction in relation to the area that is the subject of the right or information, except so much of that expenditure as:
    - (i) the seller has deducted or can deduct for an income year before the income year in which the transaction occurs; or

---

\*To find the definition of this term, see the Dictionary, starting at section 995-1.

---

Section 330-250

---

- (ii) is attributable to an amount of expenditure incurred in relation to that area that has been taken into account in an earlier agreement under section 330-235; and
- (b) the \*exploration or prospecting expenditure the seller incurs before the transaction, except so much of that expenditure as:
  - (i) the seller has deducted or can deduct for an income year before the income year in which the transaction occurs; or
  - (ii) has been taken into account in an earlier agreement under section 330-235; or
  - (iii) is expenditure on \*plant in use by the seller when the transaction happens; and
- (c) an amount included in the seller's assessable income under section 330-485 (which is about how to do a balancing adjustment) in relation to property the buyer acquires from the seller in connection with the transaction.

Note 1: Certain expenditure that can be attributed to expenditure on plant does not count in working out the amount of allowable capital expenditure of the seller: see section 330-25 of the *Income Tax (Transitional Provisions) Act 1997*.

Note 2: Subdivision 330-F (which is about excess deductions) disallows deductions that the seller would otherwise be entitled to.

- (3) If the agreement specifies more than the maximum amount that this section allows to be included in the agreement, that maximum amount is taken to be specified in the agreement instead.

**330-250 Capital expenditure on buildings or other improvements only counts toward the limit if buyer gets rights to them**

For the purposes of paragraph 330-245(2)(a), the capital expenditure incurred by the seller in relation to an area the subject of a \*mining, quarrying or prospecting right only includes capital expenditure on buildings or other improvements if the buyer acquires rights in respect of them with the right.

---

\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Section 330-255

---

**330-255 Time limit on agreement**

An agreement under section 330-235 must be made no later than 2 months after the end of the income year of the buyer in which the right or information was acquired, or later if the Commissioner allows.

**330-260 Agreement must be signed and in writing**

An agreement under section 330-235 must be in writing and signed by the buyer and the seller.

**330-265 Election under subsection 88B(5) of the *Income Tax Assessment Act 1936* voids agreement**

If:

- (a) expenditure referred to in section 330-235 relates to a lease; and
- (b) the grant, assignment or surrender of that lease is the subject of an election under subsection 88B(5) of the *Income Tax Assessment Act 1936* (whether made before or after an agreement under section 330-235);

any agreement made under section 330-235 in respect of that expenditure has no effect for the purposes of this Subdivision.

Note: Section 88B of the *Income Tax Assessment Act 1936* is about mining leases.

**330-270 Agreement results in seller giving up further deductions**

- (1) By specifying an amount in an agreement, the seller gives up the right to any further deductions in respect of the \*allowable capital expenditure or \*exploration or prospecting expenditure that the amount is attributable to.

---

\*To find the definition of this term, see the Dictionary, starting at section 995-1.

---

## Section 330-275

---

Note: This subsection is given effect by:

- section 330-35 (which is about the seller not being able to deduct an amount of expenditure); and
  - section 330-105 (which defines unrecouped expenditure); and
  - section 330-325 (which is about excess amounts not being deductible).
- (2) For the purposes of this Division, an amount specified in an agreement made under section 330-235 is taken to be wholly attributable to expenditure incurred by the seller.
- (3) The extent to which such an amount is attributable to particular expenditure, to expenditure of a particular class, or to expenditure incurred at a particular time or during a particular period, must be determined reasonably.

### **330-275 Apportionment between mining and quarrying**

If a particular amount to which a paragraph of subsection 330-245(2) applies is both:

- (a) attributable to \*eligible mining operations; and
  - (b) attributable to \*eligible quarrying operations;
- the amount must be apportioned between the 2 categories reasonably.

## **Subdivision 330-F—Excess deductions**

### **Guide to Subdivision 330-F**

#### **330-295 What this Subdivision is about**

Your deductions under Subdivision 330-A or 330-C for the income year are limited so that they cannot contribute to a tax loss. You can elect that the limit not apply.

---

\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

---

Section 330-300

---

**Table of sections**

**Operative provisions**

330-300	Limit on amounts deductible under Subdivision 330-C for the income year
330-305	Limit on amounts deductible under Subdivision 330-A for the income year
330-310	Excess amount deductible for the next income year
330-315	Election not to limit amounts deductible under Subdivision 330-A or 330-C
330-320	Excess amount <i>not</i> deductible for certain property
330-325	Excess amount not deductible if specified in a section 330-235 agreement
330-330	Excess amount set off against income exempt under section 330-60

**Operative provisions**

**330-300 Limit on amounts deductible under Subdivision 330-C for the income year**

- (1) The total of your deductions under Subdivision 330-C for the income year cannot exceed your \*available assessable income.

Note: Subdivision 330-C is about developing and operating a mine or quarry.

- (2) Your ***available assessable income*** is worked out by subtracting from your total assessable income all deductions except:

- (a) the deductions referred to in subsection (1); and
- (b) your deductions under Subdivision 330-A for the income year.

(If the result is zero or less, your ***available assessable income*** is nil.)

Note: Subdivision 330-A is about exploration and prospecting.

- (3) If the total of the deductions referred to in subsection (1) would otherwise *exceed* your \*available assessable income, those deductions are reduced proportionately so that their total *equals* it.

---

\*To find the definition of this term, see the Dictionary, starting at section 995-1.

---

## Section 330-305

---

- (4) This section has effect subject to section 330-315 (which allows you to elect not to limit the amounts deductible under Subdivision 330-C).

### **330-305 Limit on amounts deductible under Subdivision 330-A for the income year**

- (1) If (apart from this Subdivision) you would have deductions under Subdivision 330-A *and* deductions under Subdivision 330-C, apply this section *after* section 330-300.

Note: Subdivision 330-A is about exploration and prospecting and Subdivision 330-C is about developing and operating a mine or quarry.

- (2) The total of your deductions under Subdivision 330-A for the income year cannot exceed your \*available assessable income.
- (3) Your ***available assessable income*** is worked out by subtracting from your total assessable income all deductions except the deductions referred to in subsection (2). (If the result is zero or less, your ***available assessable income*** is nil.)
- (4) If the total of the deductions referred to in subsection (2) would otherwise *exceed* your \*available assessable income, those deductions are reduced proportionately so that their total *equals* it.
- (5) This section has effect subject to section 330-315 (which allows you to elect not to limit the amounts deductible under Subdivision 330-A).

### **330-310 Excess amount deductible for the next income year**

- (1) If the whole or part of a deduction you have for an income year is disallowed under section 330-300, 330-305 or 330-315, you can deduct that whole or part under section 330-15 or 330-80 (as appropriate) for the next income year for which you have assessable income.

---

\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

**Part 3-45** Rules for particular industries and occupations

**Division 330** Mining and quarrying

**Subdivision 330-F** Excess deductions

**Section 330-315**

---

(This is in addition to any other amount you can deduct under that section for that income year.)

Example: You can deduct \$1,200 under section 330-80 for the 1997-98 income year and each of the next 9 income years.

In the 1998-99 income year you only have available assessable income of \$900, so section 330-300 prevents you from deducting \$300 of the \$1200.

In the 1999-2000 income year you have available assessable income of \$2,000, so you can deduct the \$1,200 for that year *and* the \$300 disallowed for the previous year.

Note 1: Section 330-15 gives a deduction for exploration or prospecting expenditure and section 330-80 gives a deduction for allowable capital expenditure.

Note 2: Sections 330-10, 330-30, 330-35 and 330-40 of the *Income Tax (Transitional Provisions) Act 1997* convert excess amounts of exploration or prospecting expenditure at the end of the 1996-97 income year into exploration or prospecting expenditure incurred by you in the 1997-98 income year. Each section tells you what tests you have to satisfy to be able to deduct that expenditure under this Act.

Note 3: Section 330-45 of that Act converts excess amounts of allowable capital expenditure at the end of the 1996-97 income year into an amount of allowable capital expenditure that you can deduct, because of section 330-310 of this Act, under section 330-80 of this Act for the 1997-98 income year.

- (2) You can deduct an amount for an income year under section 330-15 because of this section only if you satisfy the requirements in that section.
- (3) An amount you can deduct under section 330-15 or 330-80 because of this section is subject to the limit in section 330-300 or 330-305 (as appropriate) in the same way as any other amount you can deduct under section 330-15 or 330-80.
- (4) This section has effect subject to sections 330-320, 330-325 and 330-330 (which are about excess amounts not being deductible).

---

\*To find the definition of this term, see the Dictionary, starting at section 995-1.

---

### **330-315 Election not to limit amounts deductible under Subdivision 330-A or 330-C**

- (1) You may elect that your deductions under Subdivision 330-A or 330-C for the income year not be limited by your \*available assessable income. If you have deductions under Subdivision 330-A *and* deductions under Subdivision 330-C, you may elect in relation to your deductions under one or both of the Subdivisions.

Note 1: Subdivision 330-A is about exploration and prospecting and Subdivision 330-C is about developing and operating a mine or quarry.

Note 2: If you can deduct an amount under Subdivision 330-A or 330-C for the income year that can be attributed to expenditure you incurred before 1 July 1985, you cannot make an election under this section in that year in relation to that amount (unless an exception applies): see subsection 330-55(1) of the *Income Tax (Transitional Provisions) Act 1997*.

Note 3: You can make an election under this section in relation to certain expenditure you incurred before 1 July 1985. But you cannot transfer that part of a tax loss that relates to such expenditure: see subsections 330-55(2) and (3) of the *Income Tax (Transitional Provisions) Act 1997*.

- (2) If you make an election, section 330-300 or 330-305 does not limit or reduce your deductions under the relevant Subdivision for the income year.
- (3) However, if (apart from the election) section 330-300 or 330-305 would limit or reduce the amounts (the ***previous excess deductions***) that you could otherwise deduct under the relevant Subdivision for the income year because of section 330-310, they are instead reduced proportionately so that their total equals the amount worked out by:
- (a) dividing the total previous excess deductions by the total of the amounts that you could otherwise deduct under that Subdivision for the income year (whether or not because of section 330-310); and
  - (b) multiplying the result by your \*available assessable income.

---

\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

**Part 3-45** Rules for particular industries and occupations

**Division 330** Mining and quarrying

**Subdivision 330-F** Excess deductions

**Section 330-320**

---

Note: If you deducted an amount under Subdivision 330-C for the income year that can be attributed to allowable expenditure you incurred on or after 1 July 1985, subsection (3) may not apply to that amount: see section 330-50 of the *Income Tax (Transitional Provisions) Act 1997*.

- (4) You must make an election before the time by which you must lodge your \*income tax return for the income year. However, the Commissioner may allow you to do it later than that time.

**330-320 Excess amount *not* deductible for certain property**

If:

- (a) you incurred an amount of \*exploration or prospecting expenditure, or an amount of \*allowable capital expenditure, in respect of property (not the subject of an agreement for the acquisition of a \*mining, quarrying or prospecting right or \*mining, quarrying or prospecting information under section 330-235); and
  - (b) during an income year, the property was disposed of, lost or destroyed, or you otherwise stopped using the property for \*qualifying purposes; and
  - (c) the whole or a part (the ***relevant amount***) of that expenditure would, but for this section, be deductible for that or a later income year because of section 330-310 (which is about excess amounts being deductible for the next income year);
- you cannot deduct the relevant amount for that income year or for a later income year.

**330-325 Excess amount not deductible if specified in a section 330-235 agreement**

If:

- (a) an amount is specified in an agreement under section 330-235 in relation to acquiring from you, during an income year, a \*mining, quarrying, or prospecting right or \*mining, quarrying, or prospecting information; and

---

\*To find the definition of this term, see the Dictionary, starting at section 995-1.

Section 330-330

---

- (b) the whole or a part (the *relevant amount*) of an amount would, but for this section, be deductible for that or a later income year because of section 330-310 (which is about excess amounts being deductible for the next income year); and
  - (c) the relevant amount is attributable to the amount specified in the agreement;
- you cannot deduct the relevant amount for that income year or for a later income year.

**330-330 Excess amount set off against income exempt under section 330-60**

- (1) This section applies if:
    - (a) because of section 330-60 you have \*exempt income for an income year from the sale, transfer or assignment of your rights to mine in a particular area in Australia; and
    - (b) in relation to that area there are amounts that (apart from this section) you could deduct under section 330-15, because of section 330-310, for one or more later income years.
- Note 1: Section 330-15 gives a deduction for exploration or prospecting expenditure.
- Note 2: Section 330-310 is about excess amounts being deductible for the next income year.
- (2) Each of those deductions is reduced in turn by so much of the \*exempt income as:
    - (a) does not exceed the amount of the deduction; and
    - (b) has not already been taken into account under this subsection.
  - (3) If you have 2 or more amounts of \*exempt income relating to the same area, subsection (2) applies to each of them in turn.

---

\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

---

Section 330-350

---

**Subdivision 330-G—Petroleum resource rent tax payments**

**330-350 Payments of petroleum resource rent tax**

- (1) You can deduct a payment of \*petroleum resource rent tax, or an \*instalment of petroleum resource rent tax, that you make in the 1997-98 income year or a later income year.
- (2) You cannot deduct under subsection (1) a payment that you make under paragraph 99(c) of the *Petroleum Resource Rent Tax Assessment Act 1987*.
- (3) If:
  - (a) you receive a refund for a payment of \*petroleum resource rent tax, or an \*instalment of petroleum resource rent tax, that you can deduct for the income year, or have deducted or can deduct for an earlier income year; or
  - (b) the Commissioner credits an amount under paragraph 99(d) of the *Petroleum Resource Rent Tax Assessment Act 1987* in respect of a payment of an \*instalment of petroleum resource rent tax that you can deduct for the income year, or have deducted or can deduct for an earlier income year; or
  - (c) the Commissioner pays you an amount in total or partial discharge of a debt of the kind referred to in subsection 47(1) of the *Petroleum Resource Rent Tax Assessment Act 1987*; or
  - (d) the Commissioner applies an amount under subsection 47(2) of the *Petroleum Resource Rent Tax Assessment Act 1987* in total or partial discharge of a liability you have;the amount refunded, credited, paid or applied is included in your assessable income for the income year in which it is refunded, credited, paid or applied.
- (4) This section can apply to you in your personal capacity or in your capacity as agent or trustee. Each application is separate from the other.

---

\*To find the definition of this term, see the Dictionary, starting at section 995-1.

- (5) An *instalment of petroleum resource rent tax* is an instalment of tax payable under Division 2 of Part VIII of the *Petroleum Resource Rent Tax Assessment Act 1987*.
- (6) *Petroleum resource rent tax* means tax imposed by the *Petroleum Resource Rent Tax Act 1987*, as assessed under the *Petroleum Resource Rent Tax Assessment Act 1987*.

## **Subdivision 330-H—Transporting the product**

### **Table of sections**

330-370	Transport capital expenditure is deductible
330-375	Meaning of <i>transport capital expenditure</i>
330-380	Meaning of <i>transport facility</i> and <i>public body</i>
330-385	Meaning of <i>mining or quarrying transport</i>
330-390	Meaning of <i>processed materials, treatment</i> and <i>concentration</i>
330-395	How much is deductible over how long?
330-400	What if you stop using property for mining or quarrying transport?
330-405	Resuming use of property for mining or quarrying transport
330-410	Apportionment between mining and quarrying
330-415	No double deductions for port or other ship facility

### **330-370 Transport capital expenditure is deductible**

If you incur \*transport capital expenditure in the 1997-98 income year or a later income year, an amount worked out under section 330-395 is deductible in respect of that expenditure for a number of income years, starting with the first income year in which the facility in respect of which the expenditure was incurred is used primarily and principally for \*mining or quarrying transport.

Note: Section 330-60 of the *Income Tax (Transitional Provisions) Act 1997* converts amounts of undeducted capital expenditure at the end of the 1996-97 income year into transport capital expenditure incurred by you in the 1997-98 income year. It also tells you how to deduct that expenditure.

---

\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

---

Section 330-375

---

**330-375 Meaning of *transport capital expenditure***

- (1) ***Transport capital expenditure*** is capital expenditure you incur, in carrying on a \*business for the purpose of gaining or producing assessable income, on:
- (a) a \*transport facility; or
  - (b) obtaining a right, whether by a licence, permit or otherwise, to construct or install a \*transport facility, or part of one, on land owned or leased by another person or in an adjacent area within the meaning of section 6AA of the *Income Tax Assessment Act 1936*; or
  - (c) paying compensation for any damage or loss caused by constructing or installing a \*transport facility or part of one; or
  - (d) earthworks, bridges, tunnels or cuttings that are necessary for a \*transport facility.
- (2) ***Transport capital expenditure*** also includes capital expenditure you incur, in carrying on a \*business for the purpose of gaining or producing assessable income, by way of contribution to:
- (a) someone else's capital expenditure on a \*transport facility or on anything else covered by a paragraph of subsection (1); or
  - (b) a \*public body's capital expenditure on railway rolling-stock.
- (3) ***Transport capital expenditure*** does *not* include expenditure on:
- (a) road vehicles or ships; or
  - (b) railway rolling-stock; or
  - (c) anything covered by the definition of \*housing and welfare; or
  - (d) works for providing water, light or power, in connection with a port facility or other facility for ships;
- and does not include expenditure by way of contribution to such expenditure (except expenditure by way of contribution to a \*public body's capital expenditure on railway rolling-stock).

---

\*To find the definition of this term, see the Dictionary, starting at section 995-1.

**330-380 Meaning of *transport facility* and *public body***

- (1) A ***transport facility*** is a railway, a road, a pipe-line, a port facility or other facility for ships, or another facility, that is used primarily and principally for \*mining or quarrying transport.
- (2) A ***public body*** is any of the following:
  - (a) the Commonwealth, a State or a Territory; or
  - (b) a public authority that is constituted under an \*Australian law and whose income is wholly exempt from income tax.

**330-385 Meaning of *mining or quarrying transport***

- (1) ***Mining or quarrying transport*** is transport of either of the following:
  - (a) \*minerals or \*quarry materials obtained by any person in carrying on \*eligible mining or quarrying operations;
  - (b) \*processed materials produced from \*minerals (other than \*petroleum) or \*quarry materials.
- (2) However, the following are *not mining or quarrying transport*:
  - (a) transport wholly within the site of \*eligible mining or quarrying operations;
  - (b) transport of \*petroleum:
    - (i) that has been \*treated at a refinery; or
    - (ii) that forms part of a system of reticulation to consumers; or
    - (iii) to a particular consumer or consumers.

**330-390 Meaning of *processed materials, treatment and concentration***

- (1) ***Processed materials*** are any of the following:
  - (a) materials resulting from the \*treatment of \*minerals (other than \*petroleum) or \*quarry materials;
  - (b) materials resulting from sintering or calcining;

---

\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

---

Section 330-395

---

- (c) pellets or other agglomerated forms of iron;
  - (d) alumina and blister copper;
  - (e) materials that are prescribed in the regulations.
- (2) **Treatment** means:
- (a) cleaning, leaching, crushing, grinding, breaking, screening, grading or sizing; or
  - (b) \*concentration; or
  - (c) any other treatment:
    - (i) that is applied to a \*mineral, or to \*quarry materials, before \*concentration; or
    - (ii) in the case of a \*mineral or materials not requiring \*concentration, that would, if the mineral or materials had required concentration, have been applied before the concentration;
- but does not include:
- (d) sintering or calcining; or
  - (e) producing alumina, or pellets or other agglomerated forms of iron, or processing connected with such production.
- (3) **Concentration** means concentration by a gravity, magnetic, electrostatic or flotation process.

**330-395 How much is deductible over how long?**

The amount deductible in respect of \*transport capital expenditure is:

- (a) if the materials transported are \*minerals, or \*processed materials produced from \*minerals (other than \*petroleum)—10% of that expenditure:
  - (i) for the first income year in which the facility in respect of which the expenditure was incurred is used primarily and principally for \*mining or quarrying transport; and
  - (ii) for each of the next 9 income years; or

---

\*To find the definition of this term, see the Dictionary, starting at section 995-1.

---

Section 330-400

---

- (b) if the materials transported are \*quarry materials, or \*processed materials produced from \*quarry materials—5% of that expenditure:
  - (i) for the first income year in which the facility in respect of which the expenditure was incurred is used primarily and principally for \*mining or quarrying transport; and
  - (ii) for each of the next 19 income years.

**330-400 What if you stop using property for mining or quarrying transport?**

If \*transport capital expenditure was incurred on:

- (a) property that is disposed of, lost or destroyed; or
- (b) property that you otherwise stop using primarily and principally for \*mining or quarrying transport;

no amount in respect of that expenditure is deductible under section 330-395 from your assessable income either:

- (c) for the income year in which the disposal, loss, destruction or stopping of use happens; or
- (d) for any later income year.

**330-405 Resuming use of property for mining or quarrying transport**

If:

- (a) you have stopped using property primarily and principally for \*mining or quarrying transport; and
- (b) the property later comes back into use by you primarily and principally for mining or quarrying transport;

so much of the expenditure on the property as is reasonable, is taken to be \*transport capital expenditure incurred in the income year that the property came back into such use.

---

\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Section 330-410

---

**330-410 Apportionment between mining and quarrying**

If a particular amount is covered by both of the following categories:

- (a) expenditure deductible under paragraph 330-395(a) (which is about mining transport);
- (b) expenditure deductible under paragraph 330-395(b) (which is about quarrying transport);

the amount must be apportioned between the 2 categories reasonably.

**330-415 No double deductions for port or other ship facility**

- (1) A deduction is only available under this Subdivision in respect of capital expenditure on, or by way of contribution to, a port facility or other facility for ships if:
  - (a) the expenditure is not deductible under any provision of this Act other than this Subdivision; and
  - (b) the expenditure is not taken into account in working out the amount of a deduction under any provision of this Act other than this Subdivision.
- (2) In applying subsection (1), ignore the effect of subsection 330-590(1) (which is about mining or quarrying deductions taking priority).

**Subdivision 330-I—Rehabilitating the site**

**Table of sections**

330-435	Deduction for expenditure on rehabilitation
330-440	Meaning of <i>rehabilitation</i>
330-445	Meaning of <i>ancillary activities</i> and <i>eligible building site</i>
330-450	No deduction for certain expenditure
330-455	Property used for rehabilitation taken to be used for the purpose of producing assessable income

---

\*To find the definition of this term, see the Dictionary, starting at section 995-1.

**330-435 Deduction for expenditure on rehabilitation**

- (1) Expenditure (whether of a capital nature or not) you incur in the 1997-98 income year or a later income year, to the extent it is on \*rehabilitation, is deductible for the income year in which it is incurred.
- (2) However, a provision of this Act (except Division 8 (which is about deductions)) that expressly prevents or restricts the operation of that Division applies in the same way to this section.

**330-440 Meaning of *rehabilitation***

- (1) ***Rehabilitation*** is an act of restoring or rehabilitating a site or part of a site to, or to a reasonable approximation of, its \*pre-mining condition. The site must be:
  - (a) a site on which you:
    - (i) carried on \*eligible mining or quarrying operations; or
    - (ii) conducted \*exploration or prospecting; or
    - (iii) conducted \*ancillary activities; or
  - (b) an \*eligible building site.
- (2) *Partly* restoring or rehabilitating such a site counts as ***rehabilitation*** (even if you had no intention of completing the work).
- (3) The ***pre-mining condition*** of a site is the condition the site was in before \*eligible mining or quarrying operations, \*exploration or prospecting or \*ancillary activities were first commenced on the site, whether by you or by someone else.
- (4) In the case of an \*eligible building site, the time when \*ancillary activities were first commenced on the site is the earliest time when the buildings, improvements or \*plant concerned were located on the site.

---

\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

---

Section 330-445

---

**330-445** Meaning of *ancillary activities* and *eligible building site*

- (1) Any of the following are *ancillary activities*:
- (a) preparing a site for you to carry on \*eligible mining or quarrying operations;
  - (b) providing water, light or power for, access to, or communications with, a site on which you carry on, or will carry on, \*eligible mining or quarrying operations;
  - (c) \*treating \*minerals, or \*quarry materials, obtained by you in carrying on \*eligible mining or quarrying operations;
  - (d) storing (whether before or after \*treatment) such \*minerals or \*quarry materials in relation to the operation of \*plant for use primarily and principally in treating such minerals or quarry materials;
  - (e) liquefying natural gas obtained from \*eligible mining operations you carry on.
- (2) An *eligible building site* is a site, or a part of a site, where there are:
- (a) buildings; or
  - (b) other improvements; or
  - (c) \*plant;
- that are or were necessary for you to carry on \*eligible mining or quarrying operations. However, an *eligible building site* does not include anything covered by the definition of \*housing and welfare.

**330-450** No deduction for certain expenditure

- (1) Expenditure in respect of the following is not deductible under section 330-435:
- (a) acquiring land or an interest in land or a right, power or privilege to do with land;
  - (b) constructing buildings or other structures, except levees or dams that are necessary for \*rehabilitation;

---

\*To find the definition of this term, see the Dictionary, starting at section 995-1.

---

## Section 330-455

- (c) a bond or security, however described, for performing  
\*rehabilitation.
- (2) Capital expenditure on \*housing and welfare is not deductible under section 330-435.
- (3) Expenditure is not deductible under section 330-435 to the extent to which it is taken into account in calculating an amount of depreciation that is deductible under this Act.

### **330-455 Property used for rehabilitation taken to be used for the purpose of producing assessable income**

- (1) For the purposes of this Act, if you use property for \*rehabilitation, that use is taken to be for the \*purpose of producing your assessable income.

Note: A possible effect of this is that you might, for the income year and later income years, get a deduction for depreciation of the property.

- (2) However, subsection (1) is subject to a provision of this Act that expressly provides that a particular use of property is taken not to be for the \*purpose of producing assessable income.

## **Subdivision 330-J—Balancing adjustment**

### **Guide to Subdivision 330-J**

#### **330-475 What this Subdivision is about**

A balancing adjustment is required if, for any reason, you no longer use particular property for mining or quarrying.

### **Table of sections**

---

\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Section 330-480

---

**Operative provisions**

- 330-480 When a balancing adjustment is required
- 330-485 How to do the adjustment
- 330-490 Meaning of *termination value*
- 330-495 Meaning of *written down value*
- 330-500 What if there is a disposal of part of an interest in property?

**Operative provisions**

**330-480 When a balancing adjustment is required**

- (1) A balancing adjustment is required if:
  - (a) you can deduct an amount for the income year, or you have deducted or can deduct an amount for an earlier income year:
    - (i) under Subdivision 330-A or 330-C or a corresponding previous law, in respect of capital expenditure in respect of property you own; or
    - (ii) under Subdivision 330-H or a corresponding previous law, in respect of capital expenditure in respect of property you own or use; and
  - (b) in the income year, the property is disposed of, lost or destroyed, or you otherwise stop using it:
    - (i) for \*qualifying purposes; or
    - (ii) primarily and principally for \*mining or quarrying transport; and
  - (c) if the property is disposed of—Common rule 1 (which is about roll-over relief for related entities) does not apply to the disposal.

Note 1: The corresponding previous law is set out in section 330-70 of the *Income Tax (Transitional Provisions) Act 1997*.

Note 2: Common rule 1 starts at section 41-10.

Note 3: If there is a change in partnership interests in respect of property, a balancing adjustment may be required: see Subdivision 330-K (which is about partial change of ownership).

---

\*To find the definition of this term, see the Dictionary, starting at section 995-1.

---

- (2) A balancing adjustment is also required if:
- (a) in the income year, property you own is disposed of, lost or destroyed, or you otherwise stop using it for \*qualifying purposes; and
  - (b) subsection (1) does not require a balancing adjustment in relation to the disposal, loss or destruction, or stopping of use; and
  - (c) apart from the effect of the \*excess deduction rules, you would have been able to deduct an amount for the income year, or for an earlier income year, under Subdivision 330-A or 330-C or a corresponding previous law, in respect of the property; and
  - (d) if the property is disposed of—section 330-547 (which is about roll-over relief) does not apply to the disposal.

Note: See notes 1 and 3 to subsection (1).

- (3) A **qualifying purpose** is a purpose that qualifies expenditure on the property for a deduction under Subdivision 330-A or 330-C.
- (4) You are also taken to use the property for a **qualifying** purpose if you use it (or merely hold it in reserve and install it ready to be used) for \*rehabilitation of a site on which you carried on \*eligible mining or quarrying operations, or \*exploration or prospecting, but only if the property is:
- (a) covered by the definition of \*housing and welfare; or
  - (b) \*plant for which a deduction is available under Subdivision 330-A.
- (5) The **excess deduction rules** are:
- (a) Subdivision 330-F; and
  - (b) the old excess deduction provisions.

Note: The old excess deduction provisions are set out in section 330-72 of the *Income Tax (Transitional Provisions) Act 1997*.

---

\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

**Part 3-45** Rules for particular industries and occupations

**Division 330** Mining and quarrying

**Subdivision 330-J** Balancing adjustment

**Section 330-485**

---

- (6) If there is a change in ownership of part of an interest in property, the person whose ownership has changed is taken, for the purposes of this section, to have disposed of that part. But this subsection does not apply if section 330-520 (which is about a partial change of ownership) applies to the change.

Example: You and another person are joint venturers and you each have a 50% interest in a housing and welfare development. By selling 20% of your 50% interest to the other person you are taken to have disposed of that 20% interest.

**330-485 How to do the adjustment**

- (1) You make the adjustment by comparing:

- the property's \*termination value;  
with:
- the property's \*written down value.

Note 1: If there has been an earlier disposal of the property in circumstances where roll-over relief was available under Common rule 1, the balancing adjustment is affected in 2 ways: see subsections 41-40(2) and (3) (which are about modifying the balancing adjustment).

Note 2: If there has been an earlier disposal of the property in circumstances where roll-over relief was available under any of the roll-over provisions in the *Income Tax Assessment Act 1936*, the balancing adjustment is affected in 2 ways: see section 330-65 of the *Income Tax (Transitional Provisions) Act 1997*.

- (2) If the \*termination value exceeds the \*written down value, you include the amount of the excess in your assessable income. However, the amount included cannot exceed the sum of the amounts covered by paragraph 330-480(1)(a) (your deductions).
- (3) If the \*termination value is less than the \*written down value, you deduct the difference.

---

\*To find the definition of this term, see the Dictionary, starting at section 995-1.

---

**330-490 Meaning of *termination value***

- (1) The *termination value* is:
- (a) if the property is sold for a price specific to that property—that price, less the expenses of the sale (to the extent the expenses are reasonably attributable to selling that particular property); or
  - (b) if the property is sold with other property without a specific price being allocated to it—the part of the total sale price, less the expenses of the sale, that is reasonably attributable to selling that particular property; or
  - (c) if the property is disposed of other than by selling it—its market value when the disposal took place; or
  - (d) if the property is lost or destroyed—the amount or value received or receivable under an insurance policy or otherwise in respect of the loss or destruction; or
  - (e) if you own the property and you otherwise stop using it for \*qualifying purposes or primarily and principally for \*mining or quarrying transport—its market value at that time; or
  - (f) if you do not own the property and you otherwise stop using it primarily and principally for \*mining or quarrying transport—a reasonable amount.
- (2) But the *termination value* does not include an amount that is, or will, when received, be, included in your assessable income for any income year as a lease premium.

**330-495 Meaning of *written down value***

- (1) The *written down value* is:
- your total capital expenditure in respect of the property;
- less:

---

\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

---

**Part 3-45** Rules for particular industries and occupations

**Division 330** Mining and quarrying

**Subdivision 330-K** Partial change of ownership

**Section 330-500**

---

- the amounts covered by paragraph 330-480(1)(a) (your deductions).

Note: If you dispose of part of an interest in property, section 330-500 tells you what the written down value in respect of that part is.

- (2) If the balancing adjustment is required because of subsection 330-480(2), the **written down value** is the total capital expenditure referred to in subsection (1) of this section.

**330-500 What if there is a disposal of part of an interest in property?**

If, because of subsection 330-480(6), you are taken to have disposed of part of an interest in property, the **written down value** is:

- the amount that would have been the written down value apart from this section;

multiplied by:

- the percentage interest you are disposing of.

Example: To continue the example in subsection 330-480(6), suppose the written down value of your 50% interest before the disposal is \$1 million. Since you are disposing of 20% of your 50% interest, the written down value of that 20% interest is \$200,000.

**Subdivision 330-K—Partial change of ownership**

**330-520 Partial change of ownership**

- (1) This section applies if:
- (a) a change occurs in the ownership of, or in the interests of persons in, property in respect of which:
- (i) an amount is deductible for the income year, or has been deducted or is deductible for an earlier income year,

---

\*To find the definition of this term, see the Dictionary, starting at section 995-1.

---

Section 330-520

---

under Subdivision 330-A, 330-C or 330-H or a corresponding previous law; or

- (ii) apart from the effect of the \*excess deduction rules, an amount would have been deductible for the income year, or an earlier income year, under Subdivision 330-A or 330-C or a corresponding previous law; and
- (b) the change occurs:
  - (i) because a partnership is formed or dissolved; or
  - (ii) because the constitution of a partnership or the interests of partners are varied; and
- (c) at least one of the persons who owned the property before the change still has an interest in the property after the change.

Note: The corresponding previous law is set out in section 330-70 of the *Income Tax (Transitional Provisions) Act 1997*.

- (2) This Division applies as if the person or persons who owned the property before the change (the **transferor**) had, when the change happened, disposed of the whole of the property to the person, or all of the persons, who own the property after the change (the **transferee**).
- (3) The transferor is required to do a balancing adjustment under Subdivision 330-J in relation to the disposal. The consideration for the disposal is taken to be equal to the market value of the property immediately before the change.
- (4) However, the transferor and the transferee may jointly elect for roll-over relief, in which case Common rule 1 (which is about roll-over relief) applies to the disposal.

Note: Common rule 1 starts at section 41-10.

- (5) An election under subsection (4) must:
  - (a) be in writing; and
  - (b) be made:

---

\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

---

**Part 3-45** Rules for particular industries and occupations

**Division 330** Mining and quarrying

**Subdivision 330-L** Modification of Common rules

Section 330-540

---

- (i) within 6 months after the end of the income year of the transferee in which the disposal happens; or
  - (ii) within such further time as the Commissioner allows; and
  - (c) contain enough information about the transferor's holding of the property for the transferee to work out how Common rule 1 will apply to the transferee's holding of the property.
- (6) If a person dies before the end of the time allowed for jointly electing for roll-over relief, the trustee of the person's estate may be a party to the election.

**Subdivision 330-L—Modification of Common rules**

**Table of sections**

330-540	Which Common rules apply
330-545	Modification to Common rule 1 (Roll-over relief for related entities)
330-547	Roll-over relief
330-550	Transferee inherits certain characteristics from transferor
330-555	Leases: subsection 88B(5) of the <i>Income Tax Assessment Act 1936</i> election has no effect
330-560	Modification to Common rule 2 (Non-arm's length transactions)

**330-540 Which Common rules apply**

Common rules 1 to 3 apply to expenditure in respect of which a deduction is allowed under this Division.

Note: The Common rules are in Division 41.

**330-545 Modification to Common rule 1 (Roll-over relief for related entities)**

- (1) Section 330-547 sets out further situations where roll-over relief is available in relation to disposals of property.

---

\*To find the definition of this term, see the Dictionary, starting at section 995-1.

Section 330-547

---

- (2) Sections 330-550 and 330-555 set out additional consequences that apply if roll-over relief is available:
- (a) under Common rule 1 because of section 41-20 (which is about the disposal of property); or
  - (b) under section 330-547.

Note: Section 330-75 of the *Income Tax (Transitional Provisions) Act 1997* modifies the application of Common rule 1 if you have deducted amounts in respect of property under the *Income Tax Assessment Act 1936* and in the 1997-98 income year or a later income year you dispose of the property.

### 330-547 Roll-over relief

- (1) Roll-over relief is available if:
- (a) in the income year there is a disposal of property by one entity (the **transferor**) to another entity (the **transferee**); and
  - (b) apart from the effect of the \*excess deduction rules, the transferor would have been able to deduct an amount for the income year, or an earlier income year, under Subdivision 330-A or 330-C or a corresponding previous law, in respect of the property; and
  - (c) roll-over relief is not available under Common rule 1, but would have been available if the amount had been deductible.

Note 1: The corresponding previous law is set out in section 330-70 of the *Income Tax (Transitional Provisions) Act 1997*.

Note 2: Common rule 1 starts at section 41-10.

Note 3: If roll-over relief is available, there are certain record keeping requirements that arise from the election: see section 262A of the *Income Tax Assessment Act 1936*.

- (2) Roll-over relief is also available if the transferor and the transferee jointly elect for it under subsection 330-520(4).

Note 1: Section 330-520 is about partial changes of ownership.

Note 2: If the transferor and transferee do so elect, there are certain record keeping requirements that arise from the election: see section 262A of the *Income Tax Assessment Act 1936*.

---

\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Section 330-550

---

**330-550 Transferee inherits certain characteristics from transferor**

- (1) The transferee's entitlement to a deduction under section 41-30 includes the entitlement, because of section 330-310, to deduct an amount under section 330-15 or 330-80 in respect of the property.

Note 1: Section 330-310 is about excess amounts being deductible for the next income year.

Note 2: Section 330-15 gives a deduction for exploration or prospecting expenditure and section 330-80 gives a deduction for allowable capital expenditure.

- (2) If the property disposed of is a \*mining, quarrying or prospecting right or \*mining, quarrying or prospecting information:
- (a) the transferor and the transferee are taken to have made an agreement under section 330-235 in respect of the acquisition of the property; and
  - (b) the amount specified in the agreement is taken to be equal to the amount of the transferor's \*unrecouped expenditure in respect of the property; and
  - (c) section 330-245 (which is about the limit on the amount that can be included in the agreement) is taken not to be applicable to that agreement.
- (3) If:
- (a) the property disposed of is a \*qualifying interest in relation to a \*cash bidding exploration or prospecting authority; and
  - (b) immediately before the disposal, the transferor had an \*entitlement to an eligible cash bidding amount in relation to that authority;
- then:
- (c) an agreement under section 330-180 in respect of the acquisition of the property is taken to have been made by the transferor and the transferee; and

---

\*To find the definition of this term, see the Dictionary, starting at section 995-1.

---

- (d) the amount specified in the agreement is taken to be equal to the whole of the transferor's entitlement to the eligible cash bidding amount.

**330-555 Leases: subsection 88B(5) of the *Income Tax Assessment Act 1936* election has no effect**

If the property is a lease that is a \*mining, quarrying or prospecting right, an election under subsection 88B(5) of the *Income Tax Assessment Act 1936* (whether made before or after the disposal) has no effect in relation to the grant, assignment or surrender of the lease.

Note: Section 88B of the *Income Tax Assessment Act 1936* is about mining leases.

**330-560 Modification to Common rule 2 (Non-arm's length transactions)**

- (1) Common rule 2 (Non-arm's length transactions) applies as set out in this section.
- (2) Subsection 41-65(1) applies only if:
- (a) the transaction is a purchase of property (except a \*mining, quarrying or prospecting right); or
  - (b) the expenditure qualifies for a deduction under Subdivision 330-I (which is about rehabilitating the site).
- (3) If subsection 41-65(1) applies, it has a wider operation in 2 ways.

First, it also operates if the amount of the expenditure is less than the market value of what the expenditure is for.

Second, if the amount of the expenditure is greater than or less than that market value, the amount of the expenditure is taken, for the purposes of applying this Act to both parties, to be that market value.

---

\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

**Part 3-45** Rules for particular industries and occupations

**Division 330** Mining and quarrying

**Subdivision 330-M** Special situations

**Section 330-580**

---

(4) Subsection 41-65(2) applies only if the transaction is a sale of property (except a \*mining, quarrying or prospecting right).

(5) If subsection 41-65(2) applies, it has a wider operation in 3 ways.

First, it also operates if the seller receives an amount under the sale that is greater than the market value of what the amount is for.

Second, if the amount the seller receives under the sale is greater than or less than that market value, that amount is taken, for the purposes of applying this Act to both parties, to be that market value.

Third, it also operates if the seller has incurred capital expenditure in respect of the property that qualified for a deduction under Division 10, 10AAA or 10AA of the *Income Tax Assessment Act 1936*.

**Subdivision 330-M—Special situations**

**Guide to Subdivision 330-M**

**330-580 What this Subdivision is about**

This Subdivision sets out some rules that do not fit neatly elsewhere in this Division.

**Table of sections**

**Operative provisions**

330-585	Recoupment of capital expenditure
330-590	Deductions under this Division take priority over other deductions
330-595	Mining, quarrying or prospecting—getting someone else to do the work
330-600	No deduction for petroleum income sharing
330-605	No deduction for paying transferees or sub-lessees of mining, quarrying or prospecting rights

---

\*To find the definition of this term, see the Dictionary, starting at section 995-1.

---

## **Operative provisions**

### **330-585 Recoupment of capital expenditure**

- (1) If:
  - (a) in respect of capital expenditure, you are recouped, or become entitled to be recouped, by:
    - (i) the Commonwealth, a State or a Territory; or
    - (ii) an authority constituted under an <sup>\*</sup>Australian law; or
    - (iii) any other person; and
  - (b) the amount of the recoupment is not, and will not be, included in your assessable income for any income year;this Division applies to you (and is taken always to have applied to you) as if the capital expenditure had never been incurred.
- (2) If you receive, or become entitled to receive, an amount that constitutes to an unspecified extent recoupment of capital expenditure, the extent of the recoupment must, for the purposes of subsection (1), be determined reasonably.
- (3) Section 170 of the *Income Tax Assessment Act 1936* does not stop the Commissioner amending, at any time, your assessment for an income year in order to give effect to this section.

### **330-590 Deductions under this Division take priority over other deductions**

#### *Mining or quarrying deductions take priority*

- (1) If an amount in respect of capital expenditure is deductible by you under this Division, you cannot deduct the expenditure under any provision of this Act other than this Division. The expenditure cannot be taken into account in working out the amount of any deduction other than one under this Division.

---

<sup>\*</sup>To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

---

**Section 330-595**

---

*Exception for subsequent depreciation*

- (2) Subsection (1) does not, however, prevent a deduction for depreciation of property once the property is no longer used:
- (a) for \*exploration or prospecting; or
  - (b) primarily and principally for \*mining or quarrying transport.

Note: See also the exception for a port or ship facility in section 330-415.

- (3) If the property is then used for some other purpose and as a result you can deduct an amount for depreciation, then, in applying section 56 or 62 of the *Income Tax Assessment Act 1936* to that deduction:
- (a) you are taken to have acquired the property at a cost equal to the value of the property when it was first used for that other purpose; and
  - (b) no part of the cost of the property is taken to have been deductible under this Division from your assessable income for any income year.

Note: Section 56 of the *Income Tax Assessment Act 1936* is about calculating depreciation and section 62 of that Act defines depreciated value.

- (4) For the purposes of subsection (1), an amount that would have been deductible by you under this Division apart from the operation of Subdivision 330-F (which is about excess deductions) is taken to have been deducted.

**330-595 Mining, quarrying or prospecting—getting someone else to do the work**

- (1) This section applies if:
- (a) the holder of a \*mining, quarrying or prospecting right (the **holder**) has had someone else do work which, if the holder had done it, would have amounted to \*petroleum mining or \*exploration or prospecting for \*petroleum; and

---

\*To find the definition of this term, see the Dictionary, starting at section 995-1.

---

Section 330-600

---

- (b) the holder gives or is to give consideration for the work, other than:
  - (i) a payment of a share of income the holder \*derives from selling \*petroleum or products of \*petroleum (for which see section 330-600); or
  - (ii) consideration for transferring or sub-letting a \*mining, quarrying or prospecting right (for which see section 330-605).
- (2) For the purposes of this Division:
  - (a) the work is taken to be \*petroleum mining or \*exploration or prospecting for \*petroleum, as appropriate, carried on by the holder; and
  - (b) the work is taken *not* to be petroleum mining or exploration or prospecting for petroleum carried on by the person who did the work; and
  - (c) any such consideration is taken to be expenditure the holder incurred in carrying on petroleum mining or exploration or prospecting for petroleum, as appropriate.

### **330-600 No deduction for petroleum income sharing**

If a person (the *buyer*) who has \*ordinary income or \*statutory income from selling \*petroleum obtained from \*eligible mining operations he or she carries on in an area, or from selling products of such \*petroleum:

- (a) pays to another person (the *seller*) a share of that income under an agreement; and
- (b) under the agreement:
  - (i) the seller has mined for petroleum, or explored or prospected for petroleum, in that area; or
  - (ii) the buyer has acquired, or has agreed to or has an option to acquire, from the seller \*mining, quarrying or

---

\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Section 330-605

---

prospecting information, or a \*mining, quarrying or prospecting right, in relation to that area;

the amount the buyer pays to the seller, for the purposes of this Division:

- (c) is taken to be \*ordinary income or \*statutory income the seller \*derives from selling petroleum that the seller obtained by eligible mining operations in that area; and
- (d) is taken not to be expenditure in respect of which amounts are deductible under this Division by the buyer for any income year.

**330-605 No deduction for paying transferees or sub-lessees of mining, quarrying or prospecting rights**

(1) If:

- (a) a person (the *original licensee*) has transferred or sub-let a \*mining, quarrying or prospecting right for an area to another person (the *contractor*) under an agreement; and

(b) under the agreement, the contractor:

- (i) is or was carrying on \*petroleum mining, in that area or in another area for which the original licensee holds or held a \*mining, quarrying or prospecting right; or

- (ii) is or was exploring or prospecting for \*petroleum;

the original licensee is taken *not* to have incurred expenditure, because of the transfer or sub-lease, in respect of which an amount is deductible under this Division.

- (2) Subsection (1) applies only for the purposes of this Division. It applies despite section 21 (Where consideration not in cash) of the *Income Tax Assessment Act 1936*.

*[The next Division is Division 375.]*

---

\*To find the definition of this term, see the Dictionary, starting at section 995-1.

---

## **Division 375—Australian films**

### **Table of Subdivisions**

375-G Film losses

*[The next Subdivision is Subdivision 375-G.]*

## **Subdivision 375-G—Film losses**

### **Guide to Subdivision 375-G**

#### **375-800 What this Subdivision is about**

A tax loss may have a film component if you incurred film deductions in the loss year. If so, the film component is regarded as a separate tax loss. You can deduct the film loss from your film income only.

### **Table of sections**

#### **Operative provisions**

375-805 Does your tax loss have a film component?  
375-810 What is a film loss?  
375-815 Deductibility of film losses  
375-820 Order in which tax losses are to be deducted

### **Operative provisions**

#### **375-805 Does your tax loss have a film component?**

(1) A \*tax loss in an income year has a ***film component*** if:

---

\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

---

Section 375-810

---

- your <sup>\*</sup>film deductions

exceed the sum of:

- your <sup>\*</sup>assessable film income; and
- your <sup>\*</sup>net exempt film income.

The amount of the film component is the excess or the tax loss, whichever is less.

- (2) Your **film deductions** for an income year are the following:
- amounts you can deduct for the income year under sections 124ZAF and 124ZAFA of the *Income Tax Assessment Act 1936*;
  - amounts that you can deduct for the income year and to which section 124ZAO of the *Income Tax Assessment Act 1936* applies in relation to you for the income year.
- (3) Your **assessable film income** for an income year is so much of the amount, or the sum of the amounts, to which section 26AG of the *Income Tax Assessment Act 1936* applies in relation to you for the year of income as is assessable income.
- (4) Your **net exempt film income** for an income year is your <sup>\*</sup>exempt film income for that year reduced by:
- any taxes payable in respect of that income in a country or place outside Australia; and
  - any expenses (not of a capital nature) so far as you incurred them during that year in deriving that income.
- (5) Your **exempt film income** for an income year is so much of the amount, or the sum of the amounts, to which section 26AG of the *Income Tax Assessment Act 1936* applies in relation to you for the year of income as is exempt income.

---

<sup>\*</sup>To find the definition of this term, see the Dictionary, starting at section 995-1.

---

### **375-810 What is a film loss?**

If a \*tax loss has a \*film component, it is treated as 2 separate \*tax losses: one (the ***film loss***) consisting of the film component and the other consisting of the rest (if any).

### **375-815 Deductibility of film losses**

- (1) You can deduct a \*film loss only from your \*net exempt film income or your \*net assessable film income.
- (2) Your ***net assessable film income*** for an income year is your \*assessable film income for that year reduced by your \*film deductions for that year.
- (3) This section applies in addition to the other rules about how \*tax losses are applied.

### **375-820 Order in which tax losses are to be deducted**

If, for an income year, you have \*net exempt film income, \*net assessable film income, or both, you deduct your \*film losses (in the order in which you incurred them) before any other \*tax losses of the same or any other \*loss year.

*[The next Division is Division 750.]*

---

\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

---

Section 750-1

---

## **Chapter 4—Collection and recovery of income tax (and some other taxes)**

*[The next heading is the heading to Part 4-5.]*

### **Part 4-5—Collection of income tax instalments**

#### **Division 750—Guide to Part 4-5**

##### **750-1 What this Part is about**

Most taxpayers have to pay *instalments* of income tax before the income tax they *actually* have to pay can be worked out.

##### **Table of sections**

750-5	What instalments of income tax do you have to pay?
750-10	Instalments collected periodically
750-15	Instalments collected in respect of particular transactions
750-20	What happens if your income tax is <i>less</i> than the instalments you have paid? How do you get a refund?

##### **750-5 What instalments of income tax do you have to pay?**

(1) There are 2 types of income tax instalments:

- instalments collected periodically;
- instalments collected in respect of particular transactions.

---

\*To find the definition of this term, see the Dictionary, starting at section 995-1.

---

Section 750-10

- (2) Some instalments are directly paid by you. Others are collected indirectly in this way: in certain cases someone who owes you money is required to deduct the instalment from that money, and to remit the instalment to the Commissioner.

**750-10 Instalments collected periodically**

The Divisions referred to in the table are Divisions of Part VI of the *Income Tax Assessment Act 1936*.

Item	This type of instalment ...	is paid by this type of taxpayer ...	and is collected in this way ...	See:
1.	Pay-as-you-earn instalments	Individuals who earn salary or wages	Employer deducts instalment from the salary or wages	Division 2
2.	Instalments of income tax	Companies, superannuation funds and approved deposit funds	Direct payment to the Commissioner 1, 2 or 4 times a year	Division 1C
3.	Provisional tax instalments	Individuals and certain trustees	Direct payment to the Commissioner	Division 3

**750-15 Instalments collected in respect of particular transactions**

Someone who makes a payment to you of the kind referred to in the table is required to deduct an instalment from that money, and to remit the instalment to the Commissioner.

---

\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

## Section 750-20

---

The Divisions referred to in the table are Divisions of Part VI of the *Income Tax Assessment Act 1936*.

Item	For this type of payment ...	See:
1.	Prescribed payments	Division 3A
2.	Reportable payments	Division 1AA
3.	Income from investments with financial institutions (unless you have quoted your tax file number)	Division 3B
4.	Natural resource payments to non-residents	Division 3B
5.	Withdrawals from Australian Film Industry Trust Accounts	Division 6

### **750-20 What happens if your income tax is *less* than the instalments you have paid? How do you get a refund?**

For the answers, see the relevant Division referred to in the tables in sections 750-10 and 750-15.

*[The next Part is Part 4-10.]*

---

\*To find the definition of this term, see the Dictionary, starting at section 995-1.

---

## **Part 4-10—Withholding taxes: liability and collection provisions**

### **Division 765—Withholding tax on dividends, interest and royalties**

#### **Guide to Division 765**

##### **765-1 What this Division is about**

A person who derives certain dividends, interest or royalties is liable to pay withholding tax at particular rates.

#### **Table of sections**

765-5      Where to find the rules about the withholding tax

##### **765-5 Where to find the rules about the withholding tax**

The rules about the withholding tax are in:

- the *Income Tax (Dividends, Interest and Royalties Withholding Tax) Act 1974*; and
- Division 11A (sections 128A to 128TF) of Part III of the *Income Tax Assessment Act 1936*; and
- Division 4 (sections 221YJ to 221YY) of Part VI of the *Income Tax Assessment Act 1936*.

---

\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

---

Section 766-1

---

**Division 766—Withholding tax on payments for mining operations on Aboriginal land**

**Guide to Division 766**

**766-1 What this Division is about**

Payments to Aboriginal people for mining or exploration on their land are subject to a withholding tax that is deducted by the payer.

**Table of sections**

766-5      Where to find the rules about the withholding tax

**766-5 Where to find the rules about the withholding tax**

The rules about the withholding tax are in:

- the *Income Tax (Mining Withholding Tax) Act 1979*; and
- Division 11C (sections 128U to 128X) of Part III of the *Income Tax Assessment Act 1936*; and
- Division 5 (sections 221Z to 221ZL) of Part VI of the *Income Tax Assessment Act 1936*.

---

\*To find the definition of this term, see the Dictionary, starting at section 995-1.

---

## **Division 767—Interest paid by companies on bearer debentures**

### **Guide to Division 767**

#### **767-1 What this Division is about**

A company is liable to pay tax on an amount of interest it pays or credits in respect of a debenture payable to bearer, unless the company supplies to the Commissioner the name and address of the holder of the debenture.

#### **Table of sections**

767-5      Where to find the rules about the tax

#### **767-5 Where to find the rules about the tax**

The rules about the tax are in:

- the *Income Tax (Bearer Debentures) Act 1971*; and
- Division 11 (sections 125 to 128) of Part III of the *Income Tax Assessment Act 1936*.

---

\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

---

Withholding taxes: liability and collection provisions  
**Division 768** Withholding tax on income notionally accruing under certain deferred interest investments

## Section 768-1

---

### **Division 768—Withholding tax on income notionally accruing under certain deferred interest investments**

#### **Guide to Division 768**

##### **768-1 What this Division is about**

Withholding tax is payable on certain income notionally accruing under deferred interest investments if the investor has not quoted a tax file number.

##### **Table of sections**

768-5      Where to find the rules about the withholding tax

##### **768-5 Where to find the rules about the withholding tax**

The rules about the withholding tax are in:

- the *Income Tax (Deferred Interest Securities) (Tax File Number Withholding Tax) Act 1991*; and
- Subdivision C of Division 3B (sections 221YHZP to 221ZHZZC) of Part VI of the *Income Tax Assessment Act 1936*.

*[The next Part is Part 4-30.]*

---

\*To find the definition of this term, see the Dictionary, starting at section 995-1.

---

## **Part 4-30—Collecting Medicare levy and HECS with income tax**

### **Division 785—Medicare levy**

#### **Guide to Division 785**

##### **785-1 What this Division is about**

An individual who is an Australian resident at any time during the income year is liable to pay Medicare levy based on his or her taxable income. Medicare levy is also payable by some trustees.

Some individuals are entitled to full or partial exemption from the levy, or to relief from it.

##### **Table of sections**

785-5      Where to find the rules about Medicare levy

##### **785-5 Where to find the rules about Medicare levy**

The rules about Medicare levy are in:

- the *Medicare Levy Act 1986*; and
- Part VIIB (sections 251R to 251Y) of the *Income Tax Assessment Act 1936*.

---

\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

---

Section 786-1

---

**Division 786—HECS (Higher Education Contribution Scheme)**

**Guide to Division 786**

**786-1 What this Division is about**

Most students who enrol to study in award courses in higher education institutions must pay a contribution towards the cost of their study under the Higher Education Contribution Scheme (HECS).

Students can ask the Commonwealth to pay their contribution. They agree to repay the contribution through the system for collecting income tax.

**Table of sections**

786-5      Where to find the rules about repaying HECS contributions

**786-5 Where to find the rules about repaying HECS contributions**

The rules about repaying HECS contributions are in:

- section 221ZY of the *Income Tax Assessment Act 1936*.

*[The next heading is the heading to Chapter 5.]*

---

\*To find the definition of this term, see the Dictionary, starting at section 995-1.

---

## Chapter 5—Administration

*[The next heading is the heading to Part 5-30.]*

### Part 5-30—Record-keeping and other obligations

*[The next Division is Division 900.]*

#### Division 900—Substantiation rules

##### Table of Subdivisions

	Guide to Division 900
900-A	Application of Division
900-B	Substantiating work expenses
900-C	Substantiating car expenses
900-D	Substantiating business travel expenses
900-E	Written evidence
900-F	Travel records
900-G	Retaining and producing records
900-H	Relief from effects of failing to substantiate
900-I	Award transport payments

##### Guide to Division 900

###### 900-1 What this Division is about

This Division sets out the substantiation rules that apply to certain types of losses or outgoings.

---

\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

**Part 5-30** Record-keeping and other obligations

**Division 900** Substantiation rules

**Subdivision 900-A** Application of Division

Section 900-5

---

**Subdivision 900-A—Application of Division**

**Table of sections**

900-5	Application of the requirements of Division 900
900-10	Substantiation requirement
900-12	Application of Division 900 to PAYE earners and the entities that pay them

**900-5 Application of the requirements of Division 900**

- (1) The requirements of this Division apply to an individual.
- (2) They also apply to a partnership that includes at least one individual, as if the partnership were an individual.
- (3) They do not apply to any other entity.

**900-10 Substantiation requirement**

To deduct certain types of losses or outgoings, you need to substantiate them under this Division.

<b>Item</b>	<b>For this type of loss or outgoing:</b>	<b>see:</b>
1.	Work expenses	Subdivision 900-B
2.	Car expenses	Subdivision 900-C
3.	Business travel expenses	Subdivision 900-D

Note: There are exceptions to these requirements:

- Subdivision 900-B has some specific exceptions about work expenses.
- Subdivision 900-H provides for relief from the effects of failing to substantiate.
- Subdivision 900-I has an exception about certain losses or outgoings related to award transport payments.

---

\*To find the definition of this term, see the Dictionary, starting at section 995-1.

**900-12 Application of Division 900 to PAYE earners and the entities that pay them**

*Application to PAYE earners*

- (1) If an individual is *not* an employee, but *is* a \*PAYE earner, this Division applies to him or her as if:
- (a) he or she were an employee; and
  - (b) the entity who pays (or is liable to pay) \*PAYE earnings, because of which he or she is (or would be) a \*PAYE earner, were his or her employer; and
  - (c) the \*PAYE earnings that he or she receives (or is entitled to receive) were salary or wages.

*Application to entities liable to PAYE earnings*

- (2) If an entity is *not* an employer, but pays (or is liable to pay) \*PAYE earnings, this Division applies to the entity as if:
- (a) it were an employer; and
  - (b) an individual to whom the entity pays (or is liable to pay) \*PAYE earnings were the entity's employee.

---

\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

---

Section 900-15

---

**Subdivision 900-B—Substantiating work expenses**

**Table of sections**

900-15	Getting written evidence
900-20	Keeping travel records
900-25	Retaining the written evidence and travel records
900-30	Meaning of <i>work expense</i>
900-35	Exception for small total of expenses
900-40	Exception for laundry expenses below a certain limit
900-45	Exception for work expense related to award transport payment
900-50	Exception for domestic travel allowance expenses
900-55	Exception for overseas travel allowance expenses
900-60	Exception for reasonable overtime meal allowance
900-65	Crew members on international flights need not keep travel records

**900-15 Getting written evidence**

- (1) To deduct a \*work expense:
  - (a) it must qualify as a deduction under some provision of this Act outside this Division; and
  - (b) you need to substantiate it by getting written evidence.Subdivision 900-E tells you about the evidence you need.

To find out whether an expense qualifies as a deduction under this Act, see Division 8 (Deductions).

- (2) If your expense is for fuel or oil, you have a choice of either:
  - (a) getting written evidence of it under Subdivision 900-E; or
  - (b) keeping odometer records for the period when you owned or leased the \*car or hired the \*car under a hire purchase agreement in the income year.

Subdivision 28-H tells you about odometer records.

---

\*To find the definition of this term, see the Dictionary, starting at section 995-1.

## **900-20 Keeping travel records**

You need to keep travel records if your expense is for travel that involves you being away from your ordinary residence for 6 or more nights in a row.

The travel may be within or outside Australia. Subdivision 900-F tells you about travel records.

Note: Members of international flight crews may be exempt from keeping travel records for losses or outgoings covered by travel allowances: see section 900-65.

## **900-25 Retaining the written evidence and travel records**

- (1) Once you have the material required by section 900-15 or 900-20, you must retain it for 5 years. There is no need to lodge it with your \*income tax return. The Commissioner may require you to produce it: see Subdivision 900-G. The period for which you must retain it is called the *retention period*.
- (2) The 5 years start on the due day for lodging your \*income tax return for the income year. If you lodge your return later, the 5 years start on the day you lodge it.
- (3) However, the \*retention period is extended if, when the 5 years end, you are involved in a dispute with the Commissioner that relates to the expense. See section 900-170.
- (4) If you do not retain the material for the \*retention period, you cannot deduct the expense. If you have already deducted it, your assessment may be amended to disallow the deduction.
- (5) If you lose any of the material, there are rules that might help you in section 900-205.

## **900-30 Meaning of *work expense***

### *General*

---

\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

---

Section 900-30

---

- (1) A **work expense** is a loss or outgoing you incur in producing your salary or wages.

Note: This Division also applies to payments that are *not* salary or wages, but *are* PAYE earnings: see section 900-12.

*Travel allowance expenses included*

- (2) Travel allowance expenses count as \*work expenses. A **travel allowance expense** is a loss or outgoing you incur for travel that is covered by a \*travel allowance. The loss or outgoing must:
- (a) be for accommodation or for food or drink; or
  - (b) be incidental to the travel.
- (3) A **travel allowance** is an allowance your employer pays or is to pay to you to cover losses or outgoings:
- (a) that you incur for travel away from your ordinary residence that you undertake in the course of your duties as an employee; and
  - (b) that are losses or outgoings for accommodation or for food or drink, or are incidental to the travel.

The travel may be within or outside Australia.

Note: This Division also applies to individuals who are *not* employees, but who are PAYE earners: see section 900-12.

*Meal allowance expenses included*

- (4) Meal allowance expenses count as \*work expenses. A **meal allowance expense** is a loss or outgoing that you incur for food or drink that is covered by a \*meal allowance.
- (5) A **meal allowance** is an allowance that your employer pays or is to pay to you as an employee to enable you to buy food or drink. However, an allowance is not a meal allowance if it is a \*travel allowance or part of one.

Note: This Division also applies to individuals who are *not* employees, but who are PAYE earners: see section 900-12.

---

\*To find the definition of this term, see the Dictionary, starting at section 995-1.

---

Section 900-35

---

*Motor vehicle expenses excluded*

- (6) A loss or outgoing to do with a \*motor vehicle is not treated as a \*work expense unless it is:
- (a) a loss or outgoing incurred, or a payment made, in respect of travel outside Australia; or
  - (b) a taxi fare or similar loss or outgoing.

However, most losses or outgoings to do with a \*motor vehicle are covered by the rules about \*car expenses. See Division 28 and Subdivision 900-C.

*Other types of losses or outgoings included*

- (7) In addition to losses or outgoings within the general scope of subsection (1), any of the following is a \*work expense:
- (a) depreciation of property you own and that is used, or is installed ready for use, by you in order to produce your salary or wages;
  - (b) expenditure you incur that qualifies as a deduction under section 74 (Election expenses of candidates for Parliament) or 74A (Election expenses of candidates for local governments) of the *Income Tax Assessment Act 1936*.

Note: This Division also applies to payments that are *not* salary or wages, but *are* PAYE earnings: see section 900-12.

**900-35 Exception for small total of expenses**

- (1) If the total of all the \*work expenses (including \*laundry expenses, but excluding \*travel allowance expenses and \*meal allowance expenses) that you want to deduct is \$300 or less, you can deduct them without getting written evidence or keeping travel records.

Note 1: If the total is more than \$300, you need to substantiate *all* the work expenses, not just the excess over \$300.

Note 2: Whether or not your work expenses total \$300 or less, for certain expenses that are each \$10 or less and total \$200 or less you can get

---

\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

---

**Section 900-40**

---

written evidence by making your own record, instead of getting a document from the supplier: see section 900-125.

- (2) This limit can be increased from time to time by regulations made under section 909-1.
- (3) A \*transport expense that Subdivision 900-I (Award transport payments) lets you deduct without following the rules in this Division does not count towards this limit.

**900-40 Exception for laundry expenses below a certain limit**

- (1) Even if the \*work expenses you claim total more than \$300, you can still deduct up to \$150 of \*laundry expenses without getting written evidence of them.
- (2) However, this exception does not increase the \$300 limit in section 900-35 to \$450: your \*laundry expenses still count toward that limit.

Example: You want to deduct laundry expenses of \$140 and union dues of \$200. These work expenses total more than \$300, so the exception in section 900-35 doesn't apply. This means you must substantiate the union dues expense. However, because of the exception in this section, you don't need to get written evidence of the laundry expenses.

- (3) This limit can be increased from time to time by regulations made under section 909-1.
- (4) A *laundry expense* is a \*work expense to do with washing, drying or ironing clothes (but not dry cleaning).

**900-45 Exception for work expense related to award transport payment**

You may be able to deduct, without getting written evidence or keeping travel records, a \*transport expense you incurred that is related to an allowance or reimbursement paid or payable to you by

---

\*To find the definition of this term, see the Dictionary, starting at section 995-1.

Section 900-50

---

your employer under an \*industrial instrument that was in force on 29 October 1986. Subdivision 900-I tells you about this.

Note: This Division also applies to entities that are *not* employers, but pay (or are liable to pay) PAYE earnings: see section 900-12.

**900-50 Exception for domestic travel allowance expenses**

- (1) You can deduct a \*travel allowance expense for travel within Australia without getting written evidence or keeping travel records if the Commissioner considers reasonable the total of the losses or outgoings you claim for travel covered by the allowance.
- (2) In deciding whether the total of the losses or outgoings you claim is reasonable, the Commissioner must take into account the total of the losses or outgoings of the following kinds that it would be reasonable for you to incur for the travel:
  - (a) accommodation;
  - (b) food or drink;
  - (c) losses or outgoings incidental to the travel.

**900-55 Exception for overseas travel allowance expenses**

- (1) You can deduct a \*travel allowance expense for travel outside Australia without getting written evidence under the same conditions as for domestic \*travel allowances, except that you still have to get written evidence for losses or outgoings for accommodation.
- (2) Consequently, in deciding whether the total of the losses or outgoings you claim is reasonable, the Commissioner must disregard losses or outgoings for accommodation.
- (3) However, for overseas travel covered by a \*travel allowance you must still keep travel records if the travel involves you being away from your ordinary residence for 6 or more nights in a row: Subdivision 900-F tells you about travel records.

---

\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

---

Section 900-60

---

**900-60 Exception for reasonable overtime meal allowance**

You can deduct a \*meal allowance expense without getting written evidence if:

- (a) the allowance is to enable you to buy food or drink in connection with overtime that you work; and
- (b) the allowance is paid or payable to you under an \*industrial instrument; and
- (c) the Commissioner considers reasonable the total of the losses or outgoings you claim that are covered by the allowance.

**900-65 Crew members on international flights need not keep travel records**

You can deduct a \*travel allowance expense without keeping travel records if:

- (a) the allowance covers travel by you as a crew member of an aircraft; and
- (b) the travel is principally outside Australia; and
- (c) the total of the losses or outgoings you claim for the travel that are covered by the allowance does not exceed the allowance.

**Subdivision 900-C—Substantiating car expenses**

**Table of sections**

900-70	Getting written evidence
900-75	Retaining the written evidence and odometer records

**900-70 Getting written evidence**

- (1) For the “one-third of actual expenses” method or the “log book” method of deducting a \*car expense, you need to substantiate the expense by getting written evidence. Subdivision 900-E tells you about the evidence you need.

---

\*To find the definition of this term, see the Dictionary, starting at section 995-1.

Section 900-75

---

Subdivision 28-E tells you about the “one-third of actual expenses” method and Subdivision 28-F tells you about the “log book” method.

- (2) If you are using the “one-third of actual expenses” method and your expense is for fuel or oil, you have a choice of either:
  - (a) getting written evidence of it under Subdivision 900-E ; or
  - (b) keeping odometer records for the period when you owned or leased the \*car or hired the \*car under a hire purchase agreement in the income year.

Subdivision 28-H tells you about odometer records.

- (3) If you are using the “log book” method and your expense is for fuel or oil, you do not need to get written evidence of it, because section 28-100 already requires you to keep odometer records for the period when you \*held the \*car in the income year.

**900-75 Retaining the written evidence and odometer records**

- (1) Once you have the material required by this Subdivision, you must retain it for 5 years. There is no need to lodge it with your \*income tax return. The Commissioner may require you to produce it: see Subdivision 900-G. The period for which you must retain it is called the *retention period*.
- (2) The 5 years start on the due day for lodging your \*income tax return for the income year. If you lodge your return later, the 5 years start on the day you lodge it.
- (3) However, the \*retention period is extended if, when the 5 years end, you are involved in a dispute with the Commissioner that relates to the expense. See section 900-170.
- (4) If you do not retain the material for the \*retention period, you cannot deduct the expense. If you have already deducted it, your assessment may be amended to disallow the deduction.

---

\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Section 900-80

---

- (5) If you lose any of the material, there are rules that might help you in section 900-205.

**Subdivision 900-D—Substantiating business travel expenses**

**Table of sections**

900-80	Getting written evidence
900-85	Keeping travel records
900-90	Retaining the written evidence and travel records
900-95	Meaning of <i>business travel expense</i>

**900-80 Getting written evidence**

- (1) To deduct a \*business travel expense:
- (a) it must qualify as a deduction under some provision of this Act outside this Division; and
  - (b) you need to substantiate it by getting written evidence.

Subdivision 900-E tells you about the evidence you need.

To find out whether an expense qualifies as a deduction under this Act, see Division 8 (Deductions).

- (2) If your expense is for fuel or oil, you have a choice of either:
- (a) getting written evidence of it under Subdivision 900-E ; or
  - (b) keeping odometer records for the period when you owned or leased the \*car or hired the \*car under a hire purchase agreement in the income year.

Subdivision 28-H tells you about odometer records.

**900-85 Keeping travel records**

You need to keep travel records if your expense is for travel that involves you being away from your ordinary residence for 6 or more nights in a row. Subdivision 900-F tells you about travel records.

---

\*To find the definition of this term, see the Dictionary, starting at section 995-1.

---

**900-90 Retaining the written evidence and travel records**

- (1) Once you have the material required by section 900-80 or 900-85, you must retain it for 5 years. There is no need to lodge it with your \*income tax return. The Commissioner may require you to produce it: see Subdivision 900-G. The period for which you must retain it is called the *retention period*.
- (2) The 5 years start on the due day for lodging your \*income tax return for the income year. If you lodge your return later, the 5 years start on the day you lodge it.
- (3) However, the \*retention period is extended if, when the 5 years end, you are involved in a dispute with the Commissioner that relates to the expense. See section 900-170.
- (4) If you do not retain the material for the \*retention period, you cannot deduct the expense. If you have already deducted it, your assessment may be amended to disallow the deduction.
- (5) If you lose any of the material, there are rules that might help you in section 900-205.

**900-95 Meaning of *business travel expense***

*General*

- (1) A ***business travel expense*** is a \*travel expense, in so far as you incur it in producing your assessable income other than salary or wages.

*Travel expense*

- (2) A loss or outgoing is a ***travel expense*** if you incur it for travel by you that involves you being away from your ordinary residence for at least one night. The travel may be within or outside Australia.

*Salary and wages travel expenses excluded*

---

\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

---

**Part 5-30** Record-keeping and other obligations

**Division 900** Substantiation rules

**Subdivision 900-E** Written evidence

**Section 900-100**

---

- (3) In so far as you incur \*travel expenses in producing your salary or wages, the expenses are not treated as \*business travel expenses. Instead, they are dealt with as \*work expenses in Subdivision 900-B.

Note: This Division also applies to payments that are *not* salary or wages, but *are* PAYE earnings: see section 900-12.

*Travel allowance expenses excluded*

- (4) \*Travel allowance expenses are not treated as \*business travel expenses. They too are dealt with as \*work expenses in Subdivision 900-B.

*Motor vehicle expenses excluded*

- (5) A loss or outgoing to do with a \*motor vehicle is not treated as a \*business travel expense unless it is:
- (a) a loss or outgoing incurred, or a payment made, in respect of travel outside Australia; or
  - (b) a taxi fare or similar loss or outgoing.

However, most \*motor vehicle expenses are covered by the rules about \*car expenses. See Division 28 and Subdivision 900-C.

**Subdivision 900-E—Written evidence**

**Guide to Subdivision 900-E**

**900-100 What this Subdivision is about**

This Subdivision tells you how you must get written evidence to support a claim for a deduction.

**Table of sections**

---

\*To find the definition of this term, see the Dictionary, starting at section 995-1.

---

**Operative provisions**

900-105	Ways of getting written evidence
900-110	Time limits
900-115	Written evidence from supplier
900-120	Written evidence of depreciation expense
900-125	Evidence of small expenses
900-130	Evidence of expenses considered otherwise too hard to substantiate
900-135	Evidence on a group certificate

**Operative provisions**

**900-105 Ways of getting written evidence**

Each of the following sections has a set of rules for a particular way of getting written evidence to substantiate a deduction. Which ones you can use depends on the type of expense. You only need to use one set of rules to support an expense.

**900-110 Time limits**

- (1) There is no time limit for getting written evidence of an expense (unless you want to record the expense yourself under section 900-125 or 900-130). But until you get written evidence of it, you are not entitled to a deduction for the expense.
- (2) If when you lodge your \*income tax return for the income year you have good reason to expect to get written evidence of the expense within a reasonable time, you can deduct the expense without actually getting the evidence. But if you don't get the evidence within a reasonable time, your entitlement to the deduction ceases. If you have already deducted the expense, your assessment may be amended to disallow the deduction.
- (3) Even if you only get written evidence of the expense *after* the end of the income year, you deduct the expense for that income year, not the income year in which you get the evidence.

---

\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

---

Section 900-115

---

**900-115 Written evidence from supplier**

- (1) You may use this set of rules for any type of expense except depreciation.
- (2) You must get a document from the supplier of the goods or services the expense is for. The document must set out:
  - (a) the name or business name of the supplier; and
  - (b) the amount of the expense, expressed in the currency in which it was incurred; and
  - (c) the nature of the goods or services; and
  - (d) the day the expense was incurred; and
  - (e) the day it is made out.
- (3) There are 2 exceptions to these requirements:
  - (a) if the document does not show the day the expense was incurred, you may use a bank statement or other reasonable, independent evidence that shows when it was paid;
  - (b) if the document the supplier gave you does not specify the nature of the goods or services, you may write in the missing details yourself before you lodge your <sup>\*</sup>income tax return for the income year.
- (4) The document must be in English. However, if the expense was incurred in a country outside Australia, the document can instead be in a language of that country.

**900-120 Written evidence of depreciation expense**

- (1) You may use this set of rules only for a depreciation expense.
- (2) You must get evidence of the original acquisition of the depreciating property. It must be a document that you get from the supplier of the property and that specifies:
  - (a) the name or business name of the supplier; and

---

<sup>\*</sup>To find the definition of this term, see the Dictionary, starting at section 995-1.

Section 900-125

---

- (b) the cost of the property to you; and
  - (c) the nature of the property; and
  - (d) the day you acquired the property; and
  - (e) the day it is made out.
- (3) However, if the document the supplier gave you does not specify the nature of the property, you may write in the missing details yourself before you lodge your \*income tax return for the income year in which you first claim a deduction for depreciation of the property.
- (4) If you don't get the document in time, for example because you only decided to use the property for income-producing purposes several years after you acquired it, there are rules that might help you in Subdivision 900-H (Relief from effects of failing to substantiate).
- (5) The document must be in English. However, if you imported the property into Australia, the document can instead be in a language of the country from which the property was originally exported.

**900-125 Evidence of small expenses**

- (1) If your expense is small, and you have a small total of small expenses, you can make a record of the expenses instead of getting a document from the supplier.
- (2) Each expense must be \$10 or less, and the total of all your expenses that:
- (a) are each \$10 or less; and
  - (b) you incurred in the income year and wish to deduct; and
  - (c) you must get written evidence for under this Division;
- must be \$200 or less. These limits can be increased from time to time by regulations made under section 909-1.

---

\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

---

Section 900-130

---

- (3) If the expense is not depreciation, you must get a document with the same information as required by section 900-115, except that you may create the document and record all the details yourself. You must do so as soon as possible after incurring the expense.
- (4) If the expense is depreciation, you must, as soon as possible after the last day of the income year, record in a document the following:
  - (a) the nature of the property;
  - (b) the amount of the depreciation;
  - (c) who made the record;
  - (d) the day the record is made.
- (5) A record must be in English.

**900-130 Evidence of expenses considered otherwise too hard to substantiate**

- (1) If the Commissioner considers it unreasonable to expect you to have got written evidence of an expense in any other way permitted by this Subdivision, you can use the method in section 900-125 to get written evidence of your claim.
- (2) The expense may be more than \$10 and does not count towards the \$200 limit in section 900-125.

**900-135 Evidence on a group certificate**

- (1) If the nature and amount of a \*work expense are shown on your copy of a group certificate given to you by your employer, you can use the copy as written evidence of the expense.

Note: This Division also applies to entities that are *not* employers, but pay (or are liable to pay) PAYE earnings: see section 900-12.

- (2) Expenses of the same nature need not be separately itemised; it is acceptable if they are totalled together on the certificate.

---

\*To find the definition of this term, see the Dictionary, starting at section 995-1.

---

## **Subdivision 900-F—Travel records**

### **Guide to Subdivision 900-F**

#### **900-140 What this Subdivision is about**

This Subdivision tells you how to keep travel records. A travel record is a record of activities you undertake during your travel.

#### **Table of sections**

900-145 Purpose of a travel record

##### **Operative provisions**

900-150 Recording activities in travel records

900-155 Showing which of your activities were income-producing activities

#### **900-145 Purpose of a travel record**

The purpose of a travel record is to show which of your activities were undertaken in the course of producing your assessable income, so that your losses or outgoings, or portions of them, can be attributed to income-producing purposes.

#### **Operative provisions**

##### **900-150 Recording activities in travel records**

- (1) You record an activity by specifying in a diary or similar document:
  - (a) the nature of the activity;
  - (b) the day and approximate time when it began;
  - (c) how long it lasted;
  - (d) where you engaged in it.

---

\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Section 900-155

---

- (2) An activity must be recorded before it ends, or as soon as possible afterwards. Each entry must be in English.

**900-155 Showing which of your activities were income-producing activities**

- (1) You need not record an income-producing activity. But if you don't, the activity cannot be taken into account in working out the extent to which you can deduct an expense you incur for the travel.

Example: If you fly to Los Angeles for the sole purpose of attending a 7 day conference, but you don't record the conference in your travel record, you cannot deduct the cost of the air fare. This is so even if you have written evidence that you paid the fare (eg a receipt), as required by Subdivision 900-E.

- (2) You don't need to record any other kind of activity, although you may do so.

**Subdivision 900-G—Retaining and producing records**

**Guide to Subdivision 900-G**

**900-160 What this Subdivision is about**

This Subdivision tells you how long you need to retain records of an expense and when you have to produce those records.

**Table of sections**

900-165 The retention period

**Operative provisions**

900-170 Extending the retention period if an expense is disputed

900-175 Commissioner may tell you to produce your records

900-180 How to comply with a notice

900-185 What happens if you don't comply

---

\*To find the definition of this term, see the Dictionary, starting at section 995-1.

## **900-165 The retention period**

Whenever you are required to retain records of an expense under this Division or Division 28, you need to retain the records for 5 years.

## **Operative provisions**

### **900-170 Extending the retention period if an expense is disputed**

The \*retention period is automatically extended if one of the following types of dispute relating to the expense is unresolved when the 5 years end:

- (a) an objection;
- (b) a review or appeal arising from an objection;
- (c) a request for amendment of an assessment.

The extension lasts until the dispute is resolved.

### **900-175 Commissioner may tell you to produce your records**

- (1) The Commissioner may give you a written notice telling you to produce records of expenses specified in the notice. The records must be ones that you have to retain for the \*retention period: you do not have to produce records if the retention period for those records is over.
- (2) The notice must give you 28 days or more to comply, starting on the day after the notice is given. The Commissioner may allow you more time to comply with the notice.

### **900-180 How to comply with a notice**

- (1) To comply with the notice, you must produce to the Commissioner, for each of the expenses, the material that this Division or Division 28 requires you to retain during the \*retention period.

---

\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

---

Section 900-185

---

- (2) You must also produce a summary that, for each expense for which you produce written evidence (see Subdivision 900-E):
- (a) notes the expense; and
  - (b) has a cross-reference to the written evidence of the expense; and
  - (c) summarises the particulars set out in the written evidence; and
  - (d) if the expense was in a foreign currency—shows the amount of the expense in Australian currency.

The summary must be in English in a form approved by the Commissioner.

**900-185 What happens if you don't comply**

- (1) If you do not comply with a notice for a particular expense, you cannot deduct the expense. If you have already deducted it, your assessment may be amended to disallow the deduction.
- (2) You do not commit an offence merely by not complying with the notice, despite section 8C of the *Taxation Administration Act 1953*.

**Subdivision 900-H—Relief from effects of failing to substantiate**

**Table of sections**

900-195	Commissioner's discretion to review failure to substantiate
900-200	Reasonable expectation that substantiation would not be required
900-205	What if your documents are lost or destroyed?

**900-195 Commissioner's discretion to review failure to substantiate**

Not doing something necessary to follow the rules in this Division does not affect your right to a deduction if the nature and quality of the evidence you have to substantiate your claim satisfies the Commissioner:

---

\*To find the definition of this term, see the Dictionary, starting at section 995-1.

---

- (a) that you incurred the expense; and
- (b) that you are entitled to deduct the amount you claim.

**900-200 Reasonable expectation that substantiation would not be required**

Not doing something necessary to follow the rules in this Division does not affect your right to deduct an amount if the only reason was that you had a reasonable expectation that you would not need to do it in order to be able to deduct that amount.

**900-205 What if your documents are lost or destroyed?**

- (1) If you have a *complete copy* of a document that is lost or destroyed during the \*retention period, it is treated as the original from the time of the loss or destruction.
- (2) If you don't have such a copy, but the Commissioner is satisfied that you took reasonable precautions to prevent the loss or destruction, the rest of this section explains what to do.
- (3) If the lost or destroyed document was a travel record, log book or other document that is *not* written evidence of an expense under Subdivision 900-E, you do not need to replace it; your deduction is not affected by your failing to retain or produce the document.
- (4) If the lost or destroyed document *was* written evidence, you must try to get a substitute document that meets all the original requirements (except the time limit for getting the original).
- (5) If you succeed, your deduction is not affected by your failing to retain or produce the original document. The substitute document is treated as the original from the time of the loss or destruction.
- (6) If it is not reasonably possible to succeed, your deduction is not affected by your failing to retain or produce the original document.

---

\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

**Part 5-30** Record-keeping and other obligations

**Division 900** Substantiation rules

**Subdivision 900-I** Award transport payments

Section 900-210

---

- (7) If it is reasonably possible for you to get a substitute document, but you don't get one, this section does not protect you from the consequences of failing to retain or produce the original.

**Subdivision 900-I—Award transport payments**

**Guide to Subdivision 900-I**

**900-210 What this Subdivision is about**

This Subdivision tells you when you can deduct an expense related to an award transport payment without getting written evidence or keeping travel records.

**Table of sections**

**Operative provisions**

- 900-215 Deducting an expense related to an award transport payment
- 900-220 Definition of *award transport payment*
- 900-225 Substituted industrial instruments
- 900-230 Changes to industrial instruments applied for before 29 October 1986
- 900-235 Changes to industrial instruments solely referable to matters in the instrument
- 900-240 Deducting in anticipation of receiving award transport payment
- 900-245 Effect of exception in this Subdivision on exception for small total of expenses
- 900-250 Effect of exception in this Subdivision on methods of calculating car expense deductions

**Operative provisions**

**900-215 Deducting an expense related to an award transport payment**

*The exception*

---

\*To find the definition of this term, see the Dictionary, starting at section 995-1.

---

Section 900-220

---

(1) If:

- (a) you are paid one or more \*award transport payments in the income year; and
- (b) the total of the \*transport expenses, to the extent that they relate to the award transport payments, that you incur during any income year and claim as deductions for any income year is no more than the total amount of the payments; and
- (c) those transport expenses qualify as a deduction under some provision of this Act outside this Division;

then you can deduct those transport expenses without getting written evidence or keeping travel records.

To find out whether an expense qualifies as a deduction under this Act, see Division 8 (Deductions).

*Increases to amounts payable under industrial instrument must be ignored*

- (2) For each \*award transport payment, you can deduct no more than the amount you could have deducted if the \*industrial instrument the payment is under were still in force as it was on 29 October 1986. If your claim exceeds this amount, you cannot use the exception for the expenses.

## **900-220 Definition of *award transport payment***

*Award transport payment*

- (1) An ***award transport payment*** is a \*transport payment covering particular travel that was paid under an \*industrial instrument that was in force on 29 October 1986.

*Transport payment*

- (2) A ***transport payment*** is an amount your employer pays you, or is to pay you, for travel by you in the course of working for the employer that is:

---

\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Section 900-225

---

- (a) an allowance (or part of an allowance) for the sole or main purpose of covering your \*transport expenses; or
- (b) a reimbursement to which paragraph 26(eaa) of the *Income Tax Assessment Act 1936* applies that is for the whole or a part of a \*car expense. However, an amount is not a **transport payment** if it is, or is part of, a \*travel allowance.

Note: This Division also applies to entities that are *not* employers, but pay (or are liable to pay) PAYE earnings: see section 900-12.

*Transport expense*

- (3) A **transport expense** is a loss or outgoing to do with transport, including depreciation of property used in connection with transport, but not including a loss or outgoing for accommodation or for food or drink, or expenditure incidental to transport.

**900-225 Substituted industrial instruments**

An \*industrial instrument that comes into force in substitution for another industrial instrument is taken to be a continuation of the original instrument.

**900-230 Changes to industrial instruments applied for before 29 October 1986**

- (1) Changes made to an \*industrial instrument after 29 October 1986 are taken to have been made on 29 October 1986 if they were made in response to an application made on or before 29 October 1986 that sought increases in \*transport payments.
- (2) If the application was amended after 29 October 1986, the alterations made to the \*industrial instrument count as being made on 29 October 1986 only if they did not result in increases in \*transport payments that were greater than increases in those payments sought by the application as at 29 October 1986.

---

\*To find the definition of this term, see the Dictionary, starting at section 995-1.

---

**900-235 Changes to industrial instruments solely referable to matters in the instrument**

Changes made to an \*industrial instrument after 29 October 1986 are taken to have been made on 29 October 1986 if the whole amount of the change is determined solely by reference to matters that were contained in the industrial instrument on 29 October 1986.

**900-240 Deducting in anticipation of receiving award transport payment**

- (1) If:
- (a) you have incurred a \*transport expense during an income year; and
  - (b) when you lodge your \*income tax return for the income year, you reasonably believe that you will later receive an \*award transport payment to cover the expense;
- you may deduct the expense without getting written evidence or keeping travel records.
- (2) However, if the Commissioner becomes satisfied that you will not receive the \*award transport payment after all, then, despite section 170 of the *Income Tax Assessment Act 1936*, he or she may at any time disallow the deduction and amend your assessment accordingly.

**900-245 Effect of exception in this Subdivision on exception for small total of expenses**

A \*transport expense that section 900-215 lets you deduct without getting written evidence or keeping travel records does not count towards the \$300 limit in section 900-35.

Note: Section 900-35 tells you that if the total of all the work expenses that you want to deduct is \$300 or less, you can deduct them without getting written evidence or keeping travel records.

---

\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

---

Section 900-250

---

**900-250 Effect of exception in this Subdivision on methods of calculating car expense deductions**

- (1) If the exception in this Subdivision lets you deduct, without getting written evidence or keeping travel records, losses or outgoings (*exempt losses or outgoings*) that are or include \*car expenses, or parts of \*car expenses, your use of the 4 methods for calculating deductions for car expenses for the \*car is affected.

*You may elect not to use the exception*

- (2) However, if you do not want your use of the 4 methods to be affected, you may elect not to use the exception in this Subdivision for the \*award transport payments you are paid in the income year. If you so elect, the rest of this section does not affect you.

*“Cents per kilometre” method*

- (3) You can still use the “cents per kilometre” method (see Subdivision 28-C) of deducting \*car expenses you incurred for the \*car in the income year. However, the kilometres the car travelled during the income year in the course of travel covered by the \*award transport payment or payments are not counted as \*business kilometres.

*“12% of original value” and “one-third of actual expenses” methods*

- (4) You cannot use the “12% of original value” method (see Subdivision 28-D) or the “one-third of actual expenses” method (see Subdivision 28-E) of deducting \*car expenses you incurred for the \*car in the income year.

*“Log book” method*

---

\*To find the definition of this term, see the Dictionary, starting at section 995-1.

Section 900-250

---

- (5) You can still use the “log book” method (see Subdivision 28-F) of deducting \*car expenses you incurred for the \*car in the income year. If you do:
- (a) the kilometres the car travelled during the income year in the course of travel covered by the \*award transport payment or payments are not counted as \*business kilometres; and
  - (b) in working out the amount (if any) you can deduct for such a car expense that consists partly of an exempt loss or outgoing, Subdivision 28-F is applied to the whole of the car expense, without excluding the part that consists of an exempt loss or outgoing.

---

\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

---

Section 909-1

---

**Part 5-35—Miscellaneous**

*[The next heading is the heading to Division 909.]*

**Division 909—Regulations**

**909-1 Regulations**

- (1) The Governor-General may make regulations prescribing matters that:
  - (a) this Act requires or permits to be prescribed; or
  - (b) are necessary or convenient to prescribe for carrying out or giving effect to this Act.

- (2) The regulations may prescribe penalties for offences against the regulations. A penalty may not exceed a fine of 5 penalty units.

Note: Section 4AA of the *Crimes Act 1914* deals with penalty units.

*[The next heading is the heading to Chapter 6.]*

---

\*To find the definition of this term, see the Dictionary, starting at section 995-1.

---

## Chapter 6—The Dictionary

### Part 6-1—Concepts and topics

*[The next Division is Division 950.]*

#### Division 950—Rules for interpreting this Act

##### Table of sections

950-100	What forms part of this Act
950-105	What does <i>not</i> form part of this Act
950-150	Guides, and their role in interpreting this Act

##### 950-100 What forms part of this Act

(1) These all form part of this Act:

- the headings of the Chapters, Parts, Divisions and Subdivisions of this Act;
- \*Guides;
- the headings of the sections and subsections of this Act;
- the headings for groups of sections of this Act (***group headings***);
- the notes and examples (however described) that follow provisions of this Act.

(2) The asterisks used to identify defined terms form part of this Act. However, if a term is *not* identified by an asterisk, disregard that fact in deciding whether or not to apply to that term a definition or other interpretation provision.

---

\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

---

Section 950-105

---

**950-105 What does *not* form part of this Act**

These do *not* form part of this Act:

- footnotes and endnotes;
- Tables of Subdivisions;
- Tables of sections.

**950-150 Guides, and their role in interpreting this Act**

- (1) A **Guide** consists of sections under a heading indicating that what follows is a Guide to a particular Subdivision, Division etc.
- (2) Guides form part of this Act, but they are kept separate from the operative provisions. In interpreting an operative provision, a Guide may only be considered:
  - (a) in determining the purpose or object underlying the provision; or
  - (b) to confirm that the provision's meaning is the ordinary meaning conveyed by its text, taking into account its context in the Act and the purpose or object underlying the provision; or
  - (c) in determining the provision's meaning if the provision is ambiguous or obscure; or
  - (d) in determining the provision's meaning if the ordinary meaning conveyed by its text, taking into account its context in the Act and the purpose or object underlying the provision, leads to a result that is manifestly absurd or is unreasonable.

*[The next heading is the heading to Division 960.]*

---

\*To find the definition of this term, see the Dictionary, starting at section 995-1.

## **Division 960—General**

### **Subdivision 960-E—Entities**

#### **Table of sections**

960-100 Entities

#### **960-100 Entities**

- (1) **Entity** means any of the following:

- (a) an individual;
- (b) a body corporate;
- (c) a body politic;
- (d) a partnership;
- (e) any other unincorporated association or body of persons;
- (f) a trust;
- (g) a superannuation fund.

Note: The term **entity** is used in a number of different but related senses. It covers all kinds of legal person. It also covers groups of legal persons, and other things, that in practice are treated as having a separate identity in the same way as a legal person does.

- (2) The trustee of a trust or of a superannuation fund is taken to be an **entity** consisting of the person who is the trustee, or the persons who are the trustees, at any given time.

Note: This is because a right or obligation cannot be conferred or imposed on an entity that is not a legal person.

- (3) A legal person can have a number of different capacities in which the person does things. In each of those capacities, the person is taken to be a different **entity**.

Example: In addition to his or her personal capacity, an individual may be:

- sole trustee of one or more trusts; and

---

\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

## Section 960-220

---

- one of a number of trustees of a further trust.

In his or her personal capacity, he or she is one entity. As trustee of each trust, he or she is a different entity. The trustees of the further trust are a different entity again, of which the individual is a member.

- (4) If a provision refers to an **entity** of a particular kind, it refers to the entity in its capacity as that kind of entity, not to that entity in any other capacity.

Example: A provision that refers to a company does not cover a company in a capacity as trustee, unless it also refers to a trustee.

*[The next Subdivision is Subdivision 960-H.]*

## Subdivision 960-H—Abnormal trading in shares or units

### Table of sections

960-220	Meaning of <i>trading</i>
960-225	Abnormal trading
960-230	Abnormal trading—5% of shares or units in one transaction
960-235	Abnormal trading—suspected 5% of shares or units in a series of transactions
960-240	Abnormal trading—suspected acquisition or merger
960-245	Abnormal trading—20% of shares or units traded over 60 day period

### 960-220 Meaning of *trading*

There is a **trading** in \*shares in a \*listed public company, or in units in a unit trust, if there is an issue, redemption or transfer of, or any other dealing in, those shares or units.

### 960-225 Abnormal trading

- (1) There is an **abnormal trading** in \*shares in a \*listed public company, or in units in a unit trust, if a \*trading in the shares or units is abnormal having regard to all relevant factors, including these:

---

\*To find the definition of this term, see the Dictionary, starting at section 995-1.

---

- (a) the timing of the trading, when compared with the normal timing for trading in the company's shares or in the trust's units;
  - (b) the number of shares or units traded, when compared with the normal number of the company's shares, or the trust's units, traded;
  - (c) any connection between the trading and any other trading in the company's shares or in the trust's units;
  - (d) any connection between the trading and a \*tax loss or other deduction of the company or trust.
- (2) There may also be an abnormal trading under any of the following provisions.

**960-230 Abnormal trading—5% of shares or units in one transaction**

There is an *abnormal trading* in \*shares in a \*listed public company, or in units in a unit trust, if 5% or more of the shares or units are \*traded in one transaction.

**960-235 Abnormal trading—suspected 5% of shares or units in a series of transactions**

- (1) There is an *abnormal trading* in \*shares in a \*listed public company, or in units in a unit trust, if the company or trustee knows or reasonably suspects that an entity (or an entity and one or more of the entity's \*associates) has acquired (or redeemed) 5% or more of the shares or units in 2 or more transactions and would not have done so if the company or trust did not have a \*tax loss or other deduction.

---

\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

---

Section 960-240

---

*Time when abnormal trading happens*

- (2) The \*abnormal trading happens at the time of the particular transaction that causes the 5% figure to be exceeded.

**960-240 Abnormal trading—suspected acquisition or merger**

There is an ***abnormal trading*** in \*shares in a \*listed public company, or in units in a unit trust, if a \*trading in those shares or units happens which the company or trustee knows or reasonably suspects is part of an acquisition or merger of the company with another company, or of the trust with another trust.

**960-245 Abnormal trading—20% of shares or units traded over 60 day period**

- (1) There is an ***abnormal trading*** in \*shares in a \*listed public company or units in a unit trust if more than 20% of the shares or units are \*traded during a 60 day period.

*Time when abnormal trading happens*

- (2) The \*abnormal trading happens at the end of the 60 day period concerned.

*[The next Division is Division 975.]*

---

\*To find the definition of this term, see the Dictionary, starting at section 995-1.

---

## **Division 975—Concepts about companies**

### **Table of Subdivisions**

975-A	General
975-W	Wholly-owned groups of companies

### **Subdivision 975-A—General**

#### **Table of sections**

975-100	When a company is <i>in existence</i>
975-150	<i>Position to affect rights</i> in relation to a company

### **975-100 When a company is *in existence***

- (1) A company is *in existence* if:
  - (a) it has been incorporated; and
  - (b) it has not been dissolved.
- (2) A company that is dormant (within the meaning of the Corporations Law) during the period from its incorporation until another company acquires all of its \*shares from its \*members is *not in existence* during that period.
- (3) A company that:
  - (a) is dormant (within the meaning of the Corporations Law) during the period from its incorporation until it issues new \*shares to another company; and
  - (b) immediately after issuing those new shares, redeems all of its other shares;is *not in existence* during that period.

*[The next section is section 975-150.]*

---

\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

---

Section 975-150

---

**975-150 *Position to affect rights in relation to a company***

- (1) A person is ***in a position to affect rights*** of a company in relation to another company if the person has a right, power or option:
  - (a) to acquire those rights from one or other of those companies;  
or
  - (b) to do something that would prevent one or other of those companies from exercising its rights for its own benefit, or from receiving any benefit arising from having those rights.
- (2) It does not matter whether the person has the right, power or option because of the \*constitution of one or other of those companies, any agreement or otherwise.

*[The next Subdivision is Subdivision 975-W.]*

**Subdivision 975-W—Wholly-owned groups of companies**

**Table of sections**

975-500	Wholly-owned groups
975-505	What is a 100% subsidiary?

**975-500 Wholly-owned groups**

Two companies are members of the same ***wholly-owned group*** if:

- (a) one of the companies is a \*100% subsidiary of the other company; or
- (b) each of the companies is a \*100% subsidiary of the same third company.

**975-505 What is a 100% subsidiary?**

- (1) A company (the ***subsidiary company***) is a ***100% subsidiary*** of another company (the ***holding company***) if all the \*shares in the subsidiary company are beneficially owned by:

---

\*To find the definition of this term, see the Dictionary, starting at section 995-1.

- (a) the holding company; or
  - (b) one or more 100% subsidiaries of the holding company; or
  - (c) the holding company and one or more 100% subsidiaries of the holding company.
- (2) However, the subsidiary company is *not* a **100% subsidiary** of the holding company if a person is \*in a position to affect rights, in relation to the subsidiary company, of:
  - (a) the holding company; or
  - (b) a 100% subsidiary of the holding company.
- (3) The subsidiary company is also not a **100% subsidiary** of the holding company if at some future time a person will be \*in a position to affect rights as described in subsection (2).
- (4) A company (other than the subsidiary company) is a **100% subsidiary** of the holding company if, and only if:
  - (a) it is a 100% subsidiary of the holding company; or
  - (b) it is a 100% subsidiary of a 100% subsidiary of the holding company;because of any other application or applications of this section.

*[The next Part is Part 6-5.]*

---

\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

---

Section 995-1

---

## Part 6-5—Dictionary definitions

### Division 995—Definitions

#### 995-1 Definitions

- (1) In this Act, except so far as the contrary intention appears:

**4% manner** has the meaning given by section 43-145.

**100% subsidiary** has the meaning given by section 975-505.

**abnormal trading** has the meaning given by Subdivision 960-H.

**adopted child** of a person means someone the person has adopted:

- (a) under the law of a State or Territory about adoption of children; or
- (b) under a \*foreign law about adoption of children, if the adoption would be recognised as valid under the law of a State or Territory.

**allowable capital expenditure** has the meaning given by sections 330-85, 330-90 and 330-95.

**amount** includes a nil amount.

**ancillary activities** has the meaning given by section 330-445.

**apartment building** has the meaning given by section 43-95.

**approved deposit fund** has the meaning given by section 10 of the *Superannuation Industry (Supervision) Act 1993*.

**approved stock exchange** has the meaning given by section 470 of the *Income Tax Assessment Act 1936*.

---

\*To find the definition of this term, see the Dictionary, starting at section 995-1.

Section 995-1

---

**arrangement** means any arrangement, agreement, understanding, promise or undertaking, whether express or implied, and whether or not enforceable (or intended to be enforceable) by legal proceedings.

**assessable film income** has the meaning given by section 375-805.

**assessable income** has the meaning given by sections 6-5, 6-10 and 6-15.

Note: For income years before 1997-98, **assessable income** has the meaning given by section 6-3 of the *Income Tax (Transitional Provisions) Act 1997*.

**assessment** has the meaning given by subsection 6(1) of the *Income Tax Assessment Act 1936*.

**associate** has the meaning given by section 318 of the *Income Tax Assessment Act 1936*.

**Australian law** means a \*Commonwealth law, a \*State law or a \*Territory law.

**Australian resident** means a person who is a resident of Australia for the purposes of the *Income Tax Assessment Act 1936*.

**Australian source:** \*ordinary income or \*statutory income has an Australian source if, and only if, it is \*derived from a source in Australia for the purposes of the *Income Tax Assessment Act 1936*.

**available assessable income** has the meaning given by sections 330-300 and 330-305.

**available expense** has the meaning given by section 175-30.

**available income** has the meaning given by section 175-30.

**award transport payment** has the meaning given by section 900-220.

---

\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

---

Section 995-1

---

***business*** includes any profession, trade, employment, vocation or calling, but does not include occupation as an employee.

***business kilometres*** has the meaning given by sections 28-25, 28-50, 28-75 and 28-90.

***business travel expense*** has the meaning given by section 900-95.

***business use percentage*** has the meaning given by section 28-90.

***capital allowance*** has the meaning given by section 40-10.

***capital shareholding of less than 1%*** has the meaning given by section 166-240.

***car*** means a \*motor vehicle (except a motor cycle or similar vehicle) designed to carry a load of less than 1 tonne or fewer than 9 passengers.

***car expense*** has the meaning given by section 28-13.

***car-less day*** has the meaning given by section 28-45.

***cash bidding exploration or prospecting authority*** has the meaning given by section 330-170.

***club*** means a company that was established or is carried on mainly to provide facilities, for the use or benefit of its \*members, for drinking, dining, \*recreation or entertainment.

***Commissioner*** means the Commissioner of Taxation.

Note: The office of Commissioner of Taxation is created by section 4 of the *Taxation Administration Act 1953*.

***Commonwealth law*** means a law of the Commonwealth.

***company*** means:

- (a) a body corporate; or
- (b) any other unincorporated association or body of persons;

---

\*To find the definition of this term, see the Dictionary, starting at section 995-1.

Section 995-1

---

but does not include a partnership.

***complying approved deposit fund*** means a complying approved deposit fund within the meaning of section 47 of the *Superannuation Industry (Supervision) Act 1993*.

***complying superannuation fund*** means a complying superannuation fund within the meaning of section 45 of the *Superannuation Industry (Supervision) Act 1993*.

***concentration*** has the meaning given by section 330-390.

***constitution*** of a company means the memorandum and articles of association of the company, or any other rules or document constituting the company or governing its activities.

***construction expenditure*** has the meaning given by section 43-70.

***construction expenditure area*** has the meaning given by section 43-75.

***continuing shareholders*** has the meaning given by sections 175-10, 175-20 and 175-25.

***deduct*** has the meaning given by sections 8-1 and 8-5.

***deduction*** means an amount that you can deduct.

Note: For income years before 1997-98, ***deduction*** has the meaning given by section 8-3 of the *Income Tax (Transitional Provisions) Act 1997*.

***deduction year*** has the meaning given by section 170-20.

***derive*** has a meaning affected by subsection 6-5(4).

***dividend*** has the meaning given by subsections 6(1), (4) and (5) and section 94L of the *Income Tax Assessment Act 1936*.

***dividend shareholding of less than 1%*** has the meaning given by section 166-240.

---

\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Section 995-1

---

***dual resident investment company*** has the meaning given by section 6F of the *Income Tax Assessment Act 1936*.

***eligible building site*** has the meaning given by section 330-445.

***eligible mining operations*** has the meaning given by section 330-30.

***eligible mining or quarrying operations*** has the meaning given by section 330-30.

***eligible quarrying operations*** has the meaning given by section 330-30.

***entitlement to an eligible cash bidding amount*** has the meaning given by section 330-175.

***entity*** has the meaning given by section 960-100.

***excess deduction rules*** has the meaning given by section 330-480.

***excluded exempt income*** has the meaning given by section 36-20.

***excluded loss*** has the meaning given by section 175-5.

***exempt Australian government agency*** means:

- (a) the Commonwealth, a State or a Territory; or
- (b) an authority of the Commonwealth, or of a State or Territory, if \*ordinary income \*derived by the authority would be exempt from income tax because of a provision referred to in the definition of ***relevant exempting provision*** in section 160K of the *Income Tax Assessment Act 1936*.

***exempt film income*** has the meaning given by section 375-805.

***exempt foreign government agency*** means:

- (a) the government of a foreign country, or of part of a foreign country; or

---

\*To find the definition of this term, see the Dictionary, starting at section 995-1.

Section 995-1

---

- (b) an authority of the government of a foreign country, if the authority is of a similar nature to an authority that is an \*exempt Australian government agency; or
- (c) an authority of the government of part of a foreign country, if the authority is of a similar nature to an authority that is an \*exempt Australian government agency.

***exempt income*** has the meaning given by section 6-20.

Note: For income years before 1997-98, ***exempt income*** has the meaning given by section 6-20 of the *Income Tax (Transitional Provisions) Act 1997*.

***exempt income subject to withholding tax*** has the meaning given by section 36-20.

***exploration or prospecting*** has the meaning given by section 330-20.

***exploration or prospecting authority*** has the meaning given by section 330-165.

***exploration or prospecting cash bidding payment*** has the meaning given by section 330-165.

***film component*** of a \*tax loss has the meaning given by:

- (a) section 375-805 of this Act; and
- (b) section 375-105 (Film component of tax loss for 1989-90 to 1996-97 income years) of the *Income Tax (Transitional Provisions) Act 1997*.

***film deductions*** has the meaning given by section 375-805.

***film loss*** has the meaning given by section 375-810.

***financial year*** means a period of 12 months beginning on 1 July.

***foreign law*** means a law of a foreign country.

---

\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Section 995-1

---

Note: **Foreign country** is defined in paragraph 22(1)(f) of the *Acts Interpretation Act 1901*.

**full year amounts** has the meaning given by section 165-60.

**full year car deduction** has the meaning given by section 28-45.

**full year deductions** has the meaning given by subsection 165-55(5).

**general deduction** has the meaning given by section 8-1.

**genuine prospector** has the meaning given by section 330-60.

**group heading** has the meaning given by section 950-100.

**Guide** has the meaning given by section 950-150.

**head company** has the meaning given by section 166-220.

**held**: see **hold**.

**hold** a car has the meaning given by section 28-90.

**hotel building** has the meaning given by section 43-95.

**housing and welfare** means:

- (a) residential accommodation; or
- (b) health, education, recreation or similar facilities, or facilities for meals; or
- (c) works carried out directly in connection with such accommodation or facilities, including works for providing water, light, power, access or communications.

**in a position to affect rights** has the meaning given by section 975-150.

**income company** has the meaning given by section 170-10.

**income tax** means income tax imposed by any of these:

---

\*To find the definition of this term, see the Dictionary, starting at section 995-1.

Section 995-1

---

- (a) the *Income Tax Act 1986*;
- (b) the *Income Tax (Diverted Income) Act 1981*;
- (c) the *Income Tax (Former Complying Superannuation Funds) Act 1994*;
- (d) the *Income Tax (Former Non-resident Superannuation Funds) Act 1994*;
- (e) the *Income Tax (Fund Contributions) Act 1989*.

**income tax return** means a return under section 161, 162 or 163 of the *Income Tax Assessment Act 1936*.

**income year**: the basic meaning is given by subsections 4-10(2) and 9-5(2). Some provisions refer to a particular income year. (They may describe it in different ways: for example, as the income year ending on 30 June 1998, or the 1997-98 income year.) For an entity that adopts an accounting period in place of the particular income year, the reference includes that accounting period.

Note: The Commissioner can allow you to adopt an accounting period ending on a day other than 30 June. See section 18 of the *Income Tax Assessment Act 1936*.

**indirectly**: persons have the right to receive \*dividends or capital of a company **indirectly** for their own benefit if they would receive the dividends or capital for their own benefit if:

- (a) the company were to pay or distribute the dividends or capital; and
- (b) the dividends or capital were then successively paid or distributed by each entity interposed between the company and those persons.

**individual** means a natural person.

**industrial activities** has the meaning given by section 43-150.

**industrial instrument** means:

---

\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Section 995-1

---

- (a) an \*Australian law; or
- (b) an award, order, determination or industrial agreement in force under an \*Australian law.

***in existence*** has the meaning given by section 975-100.

***injected income*** has the meaning given by sections 175-10 and 175-20.

***instalment of petroleum resource rent tax*** has the meaning given by section 330-350.

***interposed company*** has the meaning given by section 166-225.

***laundry expense*** has the meaning given by section 900-40.

***leasing company*** has the meaning given by section 82AQ or 680, as appropriate, of the *Income Tax Assessment Act 1936*.

***legal personal representative*** means:

- (a) an executor or administrator of an estate of a person who has died; or
- (b) a trustee of an estate of a person who is under a legal disability; or
- (c) a person who holds a general power of attorney that was granted by another person.

***listed public company*** means a company that satisfies all of these conditions:

- (a) any of the \*shares (except shares that carry a right to a fixed rate of \*dividend) in the company are listed for quotation in the official list of an \*approved stock exchange;
- (b) more than 20 persons (none of them companies) between them control, or are able to control, 75% or more of voting power in the company (whether directly, or indirectly through one or more interposed entities);

---

\*To find the definition of this term, see the Dictionary, starting at section 995-1.

Section 995-1

---

- (c) more than 20 persons (none of them companies) have between them the right to receive for their own benefit (whether directly, or \*indirectly through one or more interposed entities) 75% or more of any \*dividends that the company may pay;
- (d) more than 20 persons (none of them companies) have between them the right to receive for their own benefit (whether directly, or \*indirectly through one or more interposed entities) 75% or more of any distribution of capital of the company.

**loss company** has the meaning given by section 170-10.

**loss year** has the meaning given by sections 36-10, 165-70 and 175-35.

**meal allowance** has the meaning given by section 900-30.

**meal allowance expense** has the meaning given by section 900-30.

**member** of a company includes a shareholder or stockholder.

**minerals** has the meaning given by section 330-25.

**mining authority** has the meaning given by section 330-155.

**mining cash bidding payment** has the meaning given by section 330-155.

**mining or quarrying transport** has the meaning given by section 330-385.

**mining, quarrying or prospecting information** has the meaning given by section 330-240.

**mining, quarrying or prospecting right** has the meaning given by section 330-240.

**more than a 50% stake** has the meaning given by section 165-37.

---

\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Section 995-1

---

***more than 50% of the company's capital distributions*** has the meaning given by section 165-160.

***more than 50% of the company's dividends*** has the meaning given by section 165-155.

***more than 50% of the listed public company's capital distributions*** has the meaning given by section 166-160.

***more than 50% of the listed public company's dividends*** has the meaning given by section 166-155.

***more than 50% of the voting power*** has the meaning given by section 165-150.

***more than 50% of the voting power in the listed public company*** has the meaning given by section 166-150.

***motor vehicle*** means any motor-powered road vehicle (including a 4 wheel drive vehicle).

***mutual affiliate company*** has the meaning given by section 121AC of the *Income Tax Assessment Act 1936*.

***mutual insurance company*** has the meaning given by section 121AB of the *Income Tax Assessment Act 1936*.

***net assessable film income*** has the meaning given by section 375-815.

***net exempt film income*** has the meaning given by section 375-805.

***net exempt income*** has the meaning given by section 36-20.

***notional employer*** has the meaning given by section 28-185.

***notional loss*** has the meaning given by sections 165-50 and 165-75.

***notional shareholder*** has the meaning given by section 166-230.

---

\*To find the definition of this term, see the Dictionary, starting at section 995-1.

Section 995-1

---

***notional taxable income*** has the meaning given by sections 165-50 and 165-75.

***ordinary income*** has the meaning given by section 6-5.

***ownership test period*** has the meaning given by sections 165-12 and 165-37.

***ownership test time*** has the meaning given by section 166-145.

***partnership*** means an association of persons carrying on business as partners or in receipt of \*ordinary income or \*statutory income jointly, but does not include a company.

***part of a substantial shareholding*** has the meaning given by section 166-245.

***PAYE earner*** means an employee as defined by section 221A of the *Income Tax Assessment Act 1936*.

***PAYE earnings*** means salary or wages as defined by section 221A of the *Income Tax Assessment Act 1936*.

***PDF*** (pooled development fund) means a company that is a PDF within the meaning of the *Pooled Development Funds Act 1992*.

***person*** includes a company.

***petroleum*** has the meaning given by section 330-25.

***petroleum mining*** has the meaning given by section 330-5.

***petroleum resource rent tax*** has the meaning given by section 330-350.

***plant*** means plant or articles within the meaning of section 54 of the *Income Tax Assessment Act 1936*.

***pool of construction expenditure*** has the meaning given by section 43-85.

---

\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Section 995-1

---

***pooled development fund*** means a \*PDF.

***position to affect rights*** has the meaning given by section 975-150.

***pre-mining condition*** of a site has the meaning given by section 330-440.

***private company*** means a company that is not a \*public company for the income year.

***processed materials*** has the meaning given by section 330-390.

***public body*** has the meaning given by section 330-380.

***public company*** means a company that is a public company (as defined by section 103A of the *Income Tax Assessment Act 1936*) for the income year.

***purpose of producing assessable income***: something is done for the ***purpose of producing assessable income*** if it is done:

- (a) for the purpose of gaining or producing assessable income; or
- (b) in carrying on a \*business for the purpose of gaining or producing assessable income.

***qualifying interest*** in relation to an \*exploration or prospecting authority has the meaning given by section 330-170.

***qualifying investor*** has the meaning given by section 43-220.

***qualifying purpose*** has the meaning given by section 330-480.

***quarry materials*** has the meaning given by section 330-25.

***quasi-ownership right*** over land means:

- (a) a lease of the land; or
- (b) an easement in connection with the land; or
- (c) any other right, power or privilege over the land, or in connection with the land.

---

\*To find the definition of this term, see the Dictionary, starting at section 995-1.

Section 995-1

---

**recreation** includes amusement, sport or similar leisure-time pursuits.

**redeemable shares** means:

- (a) \*shares that are liable to be redeemed; or
- (b) shares that, at the option of the company that issued them, are liable to be redeemed.

**rehabilitation** has the meaning given by section 330-440.

**related** to an exploration or prospecting authority has the meaning given by sections 330-200 and 330-210.

**relative** of a person means:

- (a) the person's \*spouse; or
- (b) the parent, grandparent, brother, sister, uncle, aunt, nephew, niece, lineal descendent or adopted child of that person, or of that person's spouse; or
- (c) the spouse of a person referred to in paragraph (b).

**relevant interest** has the meaning given by Division 5 of Part 1.2 of the Corporations Law.

**research and development activities** has the meaning given by section 73B of the *Income Tax Assessment Act 1936*.

**retention authority** has the meaning given by section 330-205.

**retention period** has the meaning given by sections 28-150, 900-25, 900-75 and 900-90.

**same business test** has the meaning given by Subdivision 165-E.

**same business test period** has the meaning given by sections 165-13, 165-15, 165-35, 165-40, 165-45, 166-5 and 166-20.

**scheme** means:

- (a) any \*arrangement; or

---

\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Section 995-1

---

- (b) any scheme, plan, proposal, action, course of action or course of conduct, whether unilateral or otherwise.

**share** in a company means a share in the capital of the company, and includes stock.

**shareholding interest** has the meaning given by section 175-65.

**special company** means:

- (a) a \*mutual affiliate company; or
- (b) a \*mutual insurance company; or
- (c) a trade union registered under an \*Australian law; or
- (d) a \*sporting club; or
- (e) a company that is prescribed by the regulations.

**specific deduction** has the meaning given by section 8-5.

**sporting club** means a society, association or \*club that:

- (a) is established for the encouragement of sport or a game; and
- (b) is *not* carried on for profit to its members.

**spouse** of a person includes a person who, although not legally married to the person, lives with the person on a genuine domestic basis as the person's husband or wife.

**State law** means a law of a State.

**statutory income** has the meaning given by section 6-10.

**substantial continuity of ownership** has the meaning given by section 166-145.

**substantial shareholding**: see *part of a substantial shareholding*.

**superannuation fund** has the meaning given by section 10 of the *Superannuation Industry (Supervision) Act 1993*.

**tax** means:

---

\*To find the definition of this term, see the Dictionary, starting at section 995-1.

Section 995-1

- (a) income tax imposed by the *Income Tax Act 1986*, as assessed under this Act; or
- (b) income tax imposed as such by any other Act, as assessed under this Act.

**taxable income** has the meaning given by section 4-15.

Note: For a list of cases where taxable income is worked out in a special way, see subsection 4-15(2).

**tax loss** means:

- (a) a tax loss worked out under section 36-10, 165-70 or 175-35 of this Act; or
- (b) a tax loss as defined by section 36-105 (Tax losses for 1989-90 to 1996-97 income years) of the *Income Tax (Transitional Provisions) Act 1997*; or
- (c) a tax loss as defined by section 36-110 (Tax losses for 1957-58 to 1988-89 income years) of the *Income Tax (Transitional Provisions) Act 1997*.

Note: A \*film loss is a special type of tax loss: see section 375-810.

**tax offset** has the meaning given by section 4-10.

**termination value** of property: for the purposes of a particular \*capital allowance, the **termination value** of property is worked out as set out in the following table:

Item	For this capital allowance:	the rules for working out the termination value are in:
1.	Mining and quarrying: exploration or prospecting	section 330-490
2.	Mining and quarrying: development and operation of a mine or quarry	section 330-490

\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Section 995-1

---

Item	For this capital allowance:	the rules for working out the termination value are in:
3.	Mining and quarrying: transporting minerals or quarry materials	section 330-490

---

***Territory law*** means a law of a Territory.

***test period*** has the meaning given by sections 166-5 and 166-20.

***test time*** has the meaning given by sections 165-13, 165-40, 165-45, 166-5, 166-20 and 330-175.

***this Act*** includes:

- (a) the *Income Tax Assessment Act 1936*; and
- (b) Part IVC of the *Taxation Administration Act 1953*, so far as that Part relates to this Act or the *Income Tax Assessment Act 1936*;

except in Division 950 (Rules for interpreting this Act).

Note: Subsection (2) of this section prevents definitions in the *Income Tax Assessment Act 1997* from affecting the interpretation of the *Income Tax Assessment Act 1936*.

***trading*** in \*shares in a \*listed public company, or in units in a unit trust, has the meaning given by section 960-220.

***transport capital expenditure*** has the meaning given by section 330-375.

***transport expense*** has the meaning given by section 900-220.

***transport facility*** has the meaning given by section 330-380.

***transport payment*** has the meaning given by section 900-220.

***travel allowance*** has the meaning given by section 900-30.

---

\*To find the definition of this term, see the Dictionary, starting at section 995-1.

Section 995-1

---

**travel allowance expense** has the meaning given by section 900-30.

**travel expense** has the meaning given by section 900-95.

**treatment** has the meaning given by section 330-390.

**trustee** has the meaning given by subsection 6(1) of the *Income Tax Assessment Act 1936*.

**undeducted construction expenditure** has the meaning given by section 43-235 and 43-240.

**unrecouped expenditure** has the meaning given by section 330-105.

**voting share** in a company means:

- (a) if the company is a body corporate—a voting share as defined by section 9 of the Corporations Law; and
- (b) otherwise—a share that would be a voting share as defined by that section if the company were a body corporate.

**voting shareholding of less than 1%** has the meaning given by section 166-240.

**wholly-owned group** has the meaning given by section 975-500.

**work expense** has the meaning given by section 900-30.

**written down value** of property: for the purposes of a particular <sup>\*</sup>capital allowance, the **written down value** of property is worked out as set out in the following table:

Item	For this capital allowance:	the rules for working out the written down value are in:
1.	Mining and quarrying: exploration or prospecting	section 330-495

---

<sup>\*</sup>To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

---

Section 995-1

---

Item	For this capital allowance:	the rules for working out the written down value are in:
2.	Mining and quarrying: development and operation of a mine or quarry	section 330-495
3.	Mining and quarrying: transporting minerals or quarry materials	section 330-495

---

**years remaining** has the meaning given by section 330-100.

**you** has the meaning given by section 4-5.

**your area** has the meaning given by sections 43-115 and 43-120.

**your construction expenditure** has the meaning given by sections 43-115 and 43-120.

- (2) So far as a provision of the *Income Tax Assessment Act 1997* gives an expression a particular meaning, the provision does *not* also have effect for the purposes of the *Income Tax Assessment Act 1936 (the 1936 Act)*, except as provided in the 1936 Act.

---

[Minister's second reading speech made in—  
House of Representatives on 19 June 1996  
Senate on 31 October 1996]

(63/96)

\*To find the definition of this term, see the Dictionary, starting at section 995-1.

---

Section 995-1

---

I HEREBY CERTIFY that the above is a fair print of the Income Tax Assessment Bill 1997 which originated in the House of Representatives as the Income Tax Assessment Bill 1996 and has been finally passed by the Senate and the House of Representatives.

*Clerk of the House of Representatives*

IN THE NAME OF HER MAJESTY, I assent to this Act.

*Governor-General*  
March 1997

---

\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

---



